

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-1215

**United States Court of Appeals**

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

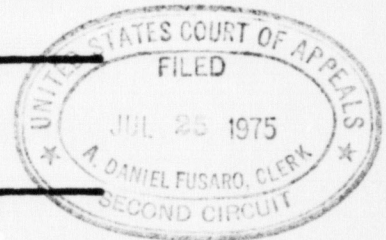
-against-

ANGELO TRABACCHI,

Appellant.

*On Appeal From The United States District Court  
For The Eastern District of New York*

**Appellant's Appendix**



**JERALD ROSENTHAL**  
Attorney for Appellant  
11 Park Place  
New York, N.Y.  
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## UNITED STATES DISTRICT COURT

JUDGE POLLACK

75 CRIM. 26

D. C. Form No. 100 Rev.

ATTORNEYS

TITLE OF CASE

THE UNITED STATES

For U.S.:

Harry C. Batchelder, AUSA  
791-1940

vs.

ANGELO TRABACCHI  
RONALD RICCIO

For Defendant:

T. Rosenberg  
31 Smith St.  
Bklyn, N.Y. for R. Riccio  
tele: 858-0859

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation 2, 2	Docket fee				
Title 21					
Sec. 846, 173, 4.					
Consp. to viol. Fed. Narco laws.					
(One Count)					

DATE	PROCEEDINGS
3-13-75	Filed indictment. (Related to 73 Cr 971) B/W ordered as to Riccio.
03-13-75	Riccio, Ronald- bench warrant issued.
03-20-75	Ronald Riccio- filed warrant for arrest and return, on 3-20-75 deft. arrested .
03-20-75	Deft. Ronald Riccio present (atty. present Thomas Cancannon) Court enters a plea of not guilty. Bench warrant ordered to be filed as a detainer. Pollack, J.
03-21-75	Ronald Riccio- filed CJA 23 financial affdvt.
03-24-75	Angelo Trabacchi (atty. Jerald Rosenthal, present) deftr. pleads not guilty. Bail cont'd. Trial 4-14-75 at 10AM, rm. 36. Pollack, J.

1

A

PROCEEDINGS

- 03-75 Filed affdvt. for writ of habeas corpus ad pros. for Ronald Riccio ret: 4-14-75.
- 03-75 Ronald Riccio (attys. A. Salzman and T. Rosenberg present) deft. produced on writ, with the deft.'s consent a stipulation was entered on the record substituting Theodore Rosenberg in place and stead of Alan Salzman. Deft. pleads not guilty-writ satisfied. Pollack, J.
- 11-75 Filed writ of habeas corpus ad pros. for Ronald Riccio ret: 4-2-75. Writ satisfied 4-3-75 Pollack, J.
- 18-75 Filed Govt.'s bill of particulars.
- 14-75 A. Trabacchi (atty. Jerald Rosenthal present)  
R. Riccio (Produced on a writ) (atty. Theodore Rosenberg present)  
before Judge Pollack jury trial begun.
- 15-75 Trial cont'd.
- 16-75 Trial cont'd.
- 17-75 Trial cont'd. and concluded. Jury verdict deft. Trabacchi- guilty. Deft. Riccio- not guilty. Jury polled. Writ satisfied as to . deft. Riccio. Pre-sentence report ordered as to deft. Trabacchi. For sentence 5-23-75 at 10 AM. Room 519. Deft. Trabacchi remanded in lieu of increased bail of \$50,000. cash or surety. Pollack, J.
- 17-75 Filed affdvt. warrant to apprehend material witness Doris Olivero the return date of this warrant is adj. to 4-14-75 at 1PM and on the respondent's assurance she will appear at that time she is released in her own recognizance meanwhile. Pollack, J.
- 22-75 Filed Govt. voir dire.
- 4-75 Filed writ of habeas corpus ad pros. for Ronald Riccio. 4-17-75 writ satisfied. Pollack, J.
- 23-75 **ANGELO TRABACCHI** (atty. present) deft. is committed to the custody of imprisonment for a period of EIGHT (8) YEARS. Pursuant to Sec. 4208(a)(2) of T. 18 U.S. Code, deft. shall become eligible for parole at such time as the Board of Parole may determine. The purpose of this is to give the Board of Parole full latitude in the circumstances and not hereby to indicate that early parole is being suggested by the Court. Pursuant to the provisions of Section 841, T. 21, U.S. Code, deft. is placed on Special for a term of THREE (3) YEARS to commence upon expiration of confinement. Deft. is notified of his right to appeal. Pollack, J. issued all copies.
- 30-75 Filed deft. A. Trabacchi's notice of appeal from judgment of 5-23-75. mailed copies.



UNITED STATES OF AMERICA

- v -

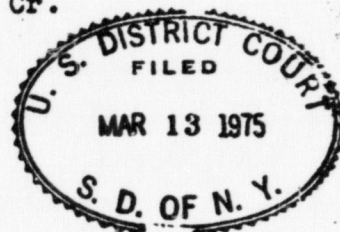
ANGELO TRABACCHI,  
and RONALD RICCIO,

Defendants.

*Cloned*  
**75 CRIM. 262**

INDICTMENT

S 75 Cr.



The Grand Jury charges:

1. From on or about the 1st day of January, 1968 and continuously thereafter up to and including the 1st day of January, 1973, in the Southern District of New York, ANGELO TRABACCHI, and RONALD RICCIO the defendants and Raymond Antonelli, Santiago Olivero, Andrew DePasquale, Albert Rossi, Robert Maher and Doris Torres Olivero named herein as co-conspirators but not as defendants and others to the Grand Jury known and unknown, [unlawfully, wilfully, intentionally and knowingly combined, conspired confederated and agreed together and with each other to violate Section 173 and 174 of Title 21, United States Code and Section 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators [unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs,] the exact amount and nature thereof being to the Grand Jury unknown, [after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Section 173 and 174 of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

#### OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about the winter of 1968, defendant ANGELO TRABACCHI met with co-conspirator Santiago Olivero.
2. In or about the spring of 1969, defendant ANGELO TRABACCHI delivered a quantity of heroin to co-conspirator Santiago Olivero.
3. In or about the spring of 1969 the defendant ANGELO TRABACCHI gave co-conspirator Santiago Olivero a quantity of heroin in a beer case.
4. In or about the spring or summer of 1969 the defendant ANGELO TRABACCHI gave to co-conspirator Santiago Olivero various amounts of heroin in beer cases.
5. In or about the summer of 1969 the defendant ANGELO TRABACCHI and co-conspirators Robert Maher and Santiago Olivero had a meeting in the vicinity of the Manhattan Beer Distributorship located between 109th and 110th Street, and First Avenue, New York, New York.
6. In or about the fall of 1969 the defendant ANGELO TRABACCHI and co-conspirators Robert Maher and Santiago Olivero had a meeting at Dan's Bar and Grill at 186th Street and Hughes Avenue, Bronx, New York.



7. In or about the fall of 1970 the defendant ANGELO TRABACCHI and co-conspirator Albert Rossi obtained and distributed approximately 1 kilogram of heroin.

8. In or about the fall of 1970 the defendant ANGELO TRABACCHI while in the vicinity of the Manhattan Beer Distributorship between 109th and 110th Street and First Avenue, New York, New York had a conversation with co-conspirator Raymond Antonelli as to the purchase by defendant TRABACCHI of 1/8th of a kilogram of heroin for \$2,500.

9. In or about the fall of 1970 the defendant ANGELO TRABACCHI while in the vicinity of the Manhattan Beer Distributorship between 109th and 110th Streets and First Avenue, New York, New York paid co-conspirators Raymond Antonelli and Andrew DePasquale \$2,500 for approximately 1/8th kilogram of heroin.

10. In or about the fall of 1970 the defendant RONALD RICCIO met co-conspirator Raymond Antonelli in the vicinity of the Delightful Coffee Shop at 116th Street, New York, New York and had a conversation.

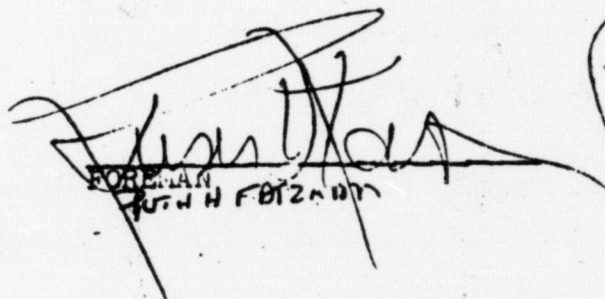
11. In or about the fall of 1970 the defendant ANGELO TRABACCHI while in the vicinity of the Manhattan Beer Distributorship between 109th and 110th Streets and First Avenue, New York, New York received from co-conspirators Antonelli and Andrew DePasquale approximately 1/8th kilogram of heroin.

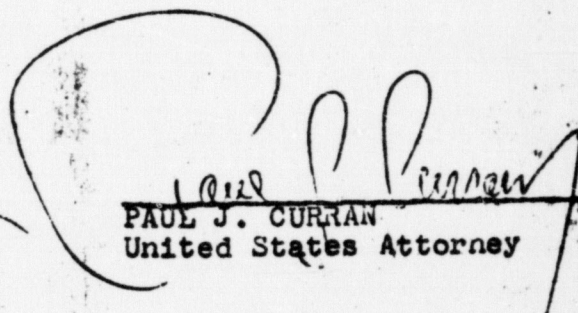
12. In or about the fall of 1970 while in the vicinity of the Manhattan Beer Distributorship between 109th and 110th Streets and First Avenue, New York, New York the defendant RONALD RICCIO tested a quantity of heroin for the defendant ANGELO TRABACCHI said heroin having been delivered by co-conspirators Raymond Antonelli and Andrew DePasquale.

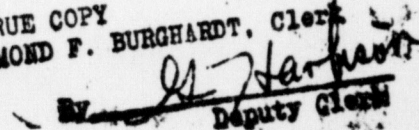
13. In or about the fall of 1970 while in the vicinity of the Mannattan Beer Distributorship between 109th and 110th Streets and First Avenue, New York, New York, the defendant ANGELO TRABACCHI had a discussion with co-conspirator Raymond Antonelli with respect to defendant TRABACCHI selling co-conspirator Antonelli 1/8th of a kilogram of heroin for \$2,500.

14. In or about the spring of 1971 the defendant ANGELO TRABACCHI received from co-conspirator Albert Rossi, while in the vicinity of the Ebb Tide Bar on Castle Hill Avenue, Bronx, New York approximately 2 kilograms of heroin.

(Title 21, United States Code, Section 173 and 174;  
Title 21, United States Code, Section 846.)

  
FOREMAN  
JOHN H. FOREMAN

  
PAUL J. CURRAN  
United States Attorney

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk  
BY   
Deputy Clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

75 CR 262

- against -

ANGELO TRABACCHI,

Defendant.

---

S I R S:

Notice is hereby given that the defendant ANGELO TRABACCHI appeals to the U.S. Court of Appeals for the 2nd Circuit from the judgment of conviction entered on May 23, 1975 convicting defendant of conspiracy to violate the narcotics laws of the United States under both sections 173 and 174 of Title 21 of U.S. Code (old law) and Section 841(a)(1) of Title 21 U.S.C. (new law) and sentencing defendant to an indeterminate term of imprisonment not to exceed eight (8) years pursuant to Section 4208(a)(2) of Title 18 U.S.C.

Dated: New York, New York  
May 28, 1975

JERALD ROSENTHAL  
310 Warren St.  
Brooklyn, N.Y. 11201  
Attorney for Defendant

Defendant's Address  
Federal Detention Headquarters  
427 West St.  
New York, New York

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH DAY YEAR  
MAY 23 1975

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Jerald Rosenthal

(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

☐ NOT GUILTY. Defendant is discharged

There being a ~~finding~~ verdict of

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of

(SEE INSERT OVER)

MAY 23 1975

S. D. OF N. Y.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **EIGHT (8) YEARS**. Pursuant to Section 4208(a)(2) of Title 18, U.S. Code, defendant shall become eligible for parole at such time as the Board of Parole may determine. The purpose of this is to give the Board of Parole latitude in the circumstances and not hereby to indicate that early parole is ~~being~~ suggested by the Court.

Pursuant to the provisions of Section 841, Title 21, U.S. Code, defendant is placed on Special Parole for a term of **THREE (3) YEARS** to commence upon expiration of confinement.

Defendant is notified of his right to Appeal.

MAY 27 1975

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

*Milton Pollack*

MILTON POLLACK

MAY 23, 1975



1 rldr EXCERPTS FROM TRANSCRIPT OF TESTIMONY 7

2 \*\*\*

3 much but she does recall how much money exchanged hands each  
4 time. She is going to tell you it was somewhere between  
5 12 and \$15,000. She is going to tell you she clearly  
6 recalls repeating these procedures somewhere between five  
7 and seven times in 1969.

8 There is going to be other evidence in this  
9 case, but I have already outlined for you what the core  
10 of the government's proof in this case is going to be.  
11 You have a very difficult but very important job to do  
12 here. This is a conspiracy case. You are not going to  
13 get any instant reply of all the events taking place  
14 day by day over five years.

15 You will have to listen to the evidence. You are  
16 going to have to fit the pieces together and you are going  
17 to have to do that on the basis of the testimony from that  
18 witness stand and some documents which may be received in  
19 evidence during this trial.

20 This will not be a long case, but that doesn't  
21 mean for two seconds that it is not a very important case.  
22 I don't have to tell you it is important to these two  
23 defendants on trial because they are charged with very  
24 serious violations of federal law, and I know I don't have  
25 to tell you how important it is to the government because  
the government is charged with a responsibility --

1 rkbr

3

2 MR. ROSENTHAL: Your Honor, I would object to  
3 this line of opening to the jury. I think this is highly  
4 prejudicial, the importance to the government, the over-  
5 riding importance. I think that is what Mr. Gold is aiming  
6 at.

7 THE COURT: I don't think it is prejudicial,  
8 but you should restrict your comments to what the govern-  
9 ment intends to prove.

10 MR. GOLD: Accordingly, ladies and gentlemen,  
11 I urge you to give this case your very careful consider-  
12 ation. I trust if you do that, and if you follow his  
13 Honor's instructions on the law at the close of the evidence  
14 presented, and most important, if you used your common sense,  
15 you will find that both defendants participated in a  
16 scheme to buy, sell and distribute heroin and are, there-  
17 fore, guilty as charged.

18  
19 \*\*\*  
20  
21  
22  
23  
24  
25



1 jblt 4

2 follow very carefully and if there is any real need for it,  
3 I will have no hesitancy, but it is the function of the lawyer  
4 to pay attention and carry on during the course of the trial.

5 MR. ROSENTHAL: I thought that since in another  
6 case that I have been assigned, the Court has granted me --

7 THE COURT: That's a sense of vicarious generosity  
8 that I don't possess.

9 MR. ROSENTHAL: Except that the judge was probably  
10 much more stingy than your Honor. Judge Michler. He is much  
11 more close with the government's money.

12 And the other application that I have was that  
13 there are some tapes that I believe Mr. Miller of the District  
14 Attorney's office, Special Narcotics Prosecutor's Office, had  
15 and we believe that the tapes would be evidence that would be  
16 helpful to us in cross examination, such as certain persons  
17 that -- Antonelli and DePasquale, certain information they  
18 gave to the police department. Plus the fact that I believe  
19 your Honor has mentioned that one of them said that you were  
20 in his hip pocket so I think that -- in other words, alleging  
21 that your Honor was fixed in some way.

22 THE COURT: Who said that?

23 MR. ROSENTHAL: I believe one of the people in the  
24 tapes. That is the information I got.

25 THE COURT: That's news to me. Reminds me of the

1 jblt 5

2 story when somebody came up for bail before the late Judge  
3 Learned Hand and the government opposed it very vigorously  
4 because they said this man was flourishing a roll of bills  
5 all over the courthouse and Judge Hand said "I see no reason  
6 to deny bail, I haven't been paid."

7 MR. ROSENTHAL: But is that what you turned over,  
8 Mr. Gold, to the Judge, the tapes?

9 MR. GOLD: No. The tapes to which Mr. Rosenthal  
10 refers were listened to in their entirety by Judge Metzner at  
11 the last trial. A similar application was made by Mr. Aidala,  
12 then Mr. Trabacchi's attorney, and the Judge ruled they were  
13 not 3500 or Brady material and if your Honor so desires, I  
14 can provide you with the tapes.

15 THE COURT: Is that recorded in the transcript?

16 MR. GOLD: It is.

17 THE COURT: Was it?

18 MR. ROSENTHAL: Yes.

19 THE COURT: Since the matter has been judicially  
20 determined, I see no reason for a competitive view on the sub-  
21 ject.

22 MR. ROSENTHAL: Except that your Honor realizes  
23 that Brady is a Supreme Court case and I think if your Honor  
24 so desires you can listen to the tapes and determine it for  
25 yourself.



1 jblt 6

2 THE COURT: Is there a transcript of the tapes?

3 MR. GOLD: My understanding is that the only  
4 portion of those tapes which are transcribed is about a six-  
5 page transcript pertaining only to a small section of the  
6 tapes. The answer to your Honor's question is no, there is  
7 not a complete transcript. Judge Metzner listened to all of  
8 the tapes.

9 THE COURT: And that appears in the record?

10 MR. GOLD: It does.

11 THE COURT: I would like to see that in the record  
12 and I will discuss that again.

13 MR. ROSENTHAL: There is no question that it does  
14 appear in the record.

15 I have read the record and Judge Metzner did  
16 listen. As your Honor knows, I am protecting every right that  
17 my client has.

18 One other thing, your Honor, and this is a serious  
19 thing. We have not decided whether Mr. Trabacchi is going to  
20 take the stand or not but if he does, there is certain material  
21 in Mr. Aidala's files that he refused to turn over to me, such  
22 as bank statements and a letter from the IRS that my client  
23 has been reviewed by them and they found nothing wrong with  
24 the '68 to '72 tax returns.

25 I have no specifically asked Mr. Aidala for this  
but I asked and I sent, your Honor, a letter for the file

he admits that prior to 1970, indeed, going back as far as 1968, he worked for Mr. Trabacchi; he admits that he was a narcotics addict and I think that those three factors combined overwhelmingly make a prima facie case at least and I intend to argue, of course, that they make a case beyond a reasonable doubt.

THE COURT: Motion denied.

MR. ROSENTHAL: Your Honor, I likewise ask for the same relief that Mr. Rosenberg does, dismissal of the indictment and I would also add a ground on the due process clause.

It seems that your Honor ordered certain materials turned over to me today which were available to the government -- not today, but yesterday, I believe -- which were available to the government prior to the trial of this matter; mainly, the lengthy statements of defendant Antonelli and Depasquale and this was available during the first, I believe, and most surely the second trial and I believe that there were hung juries in those trials and it could very well have been -- well, the first trial it had nothing to do with but on the second trial it could very well have been that the return by the defendants of these materials might have meant the difference between a hung jury and acquittal and I would think that under due process grounds, the course of this prosecution, this indictment should be dismissed, your Honor.



1 jblt

2 THE COURT: You are not claiming that you did not  
3 have an adequate opportunity to read and consider and utilize  
4 the Brady material that I directed be turned over, are you?

5 MR. ROSENTHAL: No, that's not the claim. I  
6 don't think your Honor understands.

7 THE COURT: I understand it. I just want to  
8 make sure that you are not questioning the propriety of the  
9 procedure at this trial. That is not your purpose at all.

10 MR. ROSENTHAL: No, that is not my purpose at  
11 all.

12 My purpose, your Honor, is to go back to the  
13 prior trial and make a due process claim as to that. Your  
14 Honor knows I have already made a double jeopardy claim as  
15 to the prior trial and I have renewed the application on  
16 the speedy trial ground, that a witness that he had available  
17 to him, an Anthony Salerno or Santana has since died and --

18 THE COURT: Which is it? Salerno or Santana?  
19 Is it Salerno or Santana?

20 MR. ROSENTHAL: It is Santana, your Honor, and I  
21 would also renew those motions for dismissal of this indict-  
22 ment.

23 THE COURT: Well, those motions, I take it, are  
24 for preserving some records that you have in mind, rather than  
25 attacking the propriety of this trial; isn't that so?

1  
2 MR. ROSENTHAL: Well, I think that all of these  
3 are Constitutional questions which your Honor can rule on if  
4 you so desire and you could dismiss the indictment on due  
5 process grounds.

6 THE COURT: To the extent that there is any  
7 challenge to the Constitutionality of the proceedings of the  
8 government, the application is, in all respects, denied.

9 There has been no indication whatsoever that  
10 the defendant whom you represent was impeded or delayed in  
11 securing a resolution of the indictment.

12 The fact that there were hung juries in the prior  
13 trials as to this defendant, but not as to others, merely  
14 indicates that somebody on the jury or somebodies, whatever  
15 the vote was at that time, had some doubt in his mind about  
16 the matter, or decided not to vote for a conviction, but it  
17 can hardly be said that that rises to the dignity of a position  
18 where the Brady material that you were furnished with at the  
19 present time, which was nothing more than more of the same  
20 that you already had with respect to the mischief and  
21 improprieties of the witnesses that you went into very  
22 exhaustively without the Brady material and didn't even bother,  
23 after you received the Brady material, to go into again, is  
24 sufficient indication that there isn't very much to the point  
25 that there was any deprivation.



1 jblt

2 MR. ROSENTHAL: If your Honor please, I do not  
3 want to suggest that Mr. Gold -- I could have come running over.  
4 I am suggesting that this information was available to the  
5 government at the first and the second trial and it has nothing  
6 to do with this proceeding. I have had adequate time to read  
7 it and I used it -- I read it all and used it to the best of  
8 my ability and I don't accuse Mr. Gold of anything.

9 I don't know why the United States Attorney  
10 always gets so touchy when counsel makes a comment.

11 THE COURT: He gets touchy because of the broad  
12 expanse of your statement, which you explained now you did  
13 not intend.

14 All right.

15 The motion is denied. We will proceed.

16 What about the defense?

17 MR. ROSENBERG: Your Honor, I am ready to proceed  
18 if I can have just three minutes. I am going to have one  
19 witness.

20 THE COURT: Go ahead.

21 (Pause.)

22

23

24

25

MR. GOLD: May it please the Court, Mr.

Rosenthal and Mr. Rosenberg, as I promised in my opening, you haven't gotten any instant reply of the events that happened day-by-day, hour-by-hour, between 1968 and 1973. Instead, you have learned only a little bit about a few hours and a few days in the life of Angelo Trabacchi --

MR. ROSENTHAL: Your Honor, I would object to this.

THE COURT: Overruled.

MR. GOLD: Ladies and gentlemen, the evidence in this case gives you only a glimpse of what his life amounted to between 1968 and 1973.

MR. ROSENTHAL: Again, your Honor, I would object.

THE COURT: Overruled.

MR. GOLD: This is not a case about nickel bags. The evidence in this case overwhelmingly shows that Angelo Trabacchi and others were involved in major distributions of narcotics in this city. Angelo Trabacchi, on the evidence before you, was a narcotics dealer up to his ears and the evidence before you clearly shows that Angelo Trabacchi was not in business alone. Some of the people who were in business with him were accomplices to his crime. Some of them testified before you. They testified



1 jbbbr

2 took out a sample, went around the corner and had it tested  
3 and came back and told Trabacchi it was only a two and  
4 Trabacchi concocts the following plan:

5 You don't want to lose Wohlfeld and his customers,  
6 you don't want to lose the source of omoney so take the  
7 heroin that only takes a two, sell that to your customers  
8 and to make you come out a little closer to whole, give  
9 9,000 in cash. 9,000, by the way, Trabacchi  
10 didn't have, Rossi tell us. He had to borrow it.

11 Keep that in mind when you think about the trans-  
12 action in the winter or spring of 1971.

13 The testimony is that Rossi and Trabacchi met at  
14 a bar in the Bronx. Trabacchi told Rossi, in substance,  
15 I hear you have been making moves with my customers behind  
16 my back; I am not getting my cut. Rossi told you that  
17 between the \$16,000 deal and the 2 kilo transaction in the  
18 winter of '71 he had made a move with Fred Wohlfeld. Tra-  
19 bacchi had been cut out of the picture; he didn't get  
20 a nickel at least as far as Rossi knew.

21 Trabacchi confirms it. Trabacchi tells Rossi, you  
22 are making these moves behind my back, I am not getting my  
23 money.

24 And so, Rossi agrees to do a 2 kilo deal for a  
25 total price of somewhere between 40 and \$50,000.

10

1 jblt 3

2 What is the evidence? Antonelli tells you  
3 about a total of four transactions with Trabacchi, each of  
4 which involved no more than one-eighth or for \$2,500.

5 The man he referred to as his partner, his  
6 admitted co-conspirator and co-defendant in cases where they  
7 both pleaded guilty came in here and told you about pieces  
8 of two of those four transactions. Does that sound like a  
9 frame? You will recall Depasquale's testimony is that he  
10 only recalls accompanying Antonelli on the occasions when  
11 Antonelli made two deliveries. The transaction that Antonelli  
12 remembers, namely, the time that Trabacchi never paid him the  
13 \$1,800 that was owed, the so called fourth transaction,  
14 Antonelli tells you Depasquale was there and Depasquale says  
15 he has no recollection of that.

16 What is the picture in 1972? In 1972, the  
17 testimony by Officer Twohill is that Manhattan Beer is  
18 being frequented by three people -- Trabacchi, Wohlfeld and  
Gross.

20 Now, unquestionably, there were others. We make  
21 no claim that they were the only three people going to Man-  
22 hattan Beer but it is pretty curious that the three people  
23 who Rossi tells us were the source of money and narcotics in  
24 the fall of 1970 are still going to Manhattan Beer in the winter  
25 of '72, going into the store and coming out with beer cases.



1 jblt

2 that supplied the heroin that she shot into her body,  
3 \$1,000 worth a day.

4 Let me suggest this to you:

5 The mental functions of anyone shooting \$1,000  
6 worth a day are certainly going to be impaired to some  
7 extent under some circumstances but I submit there is one  
8 thing a junkie never forgets, and that is where her pusher  
9 is and who he is.

10 Doris Olivero told you today that she did some-  
11 thing which I think all of us think is very commendable. She  
12 beat her habit cold turkey in prison. She came in here  
13 today and under oath told you that her memory today is better  
14 than it was in 1969. There was no doubt in her mind about who  
15 her supplier was.

16 I think you ought to find that very compelling  
17 evidence.

18 Finally, Depasquale. Depasquale pleaded guilty to  
19 violating the state narcotics laws. He told you that he faced  
20 years and years of his life in jail. He cooperated, had his  
21 cooperation brought to the attention of the sentencing judge  
22 and what did he get? Time served.

23 Mr. Rosenthal tried to paint a picture for you  
24 that time served is like being at Boy Scout camp. I think  
25 that argument in the words of Mr. Rosenthal's opening, is an

1 jblt

2 You are going to hear a lot about Antonelli's  
3 bad motives. I would like to suggest one to you that I know  
4 will not be put forward by the defense. The testimony is that  
5 on the last transaction Antonelli made a deal with Trabacchi  
6 to supply an eighth for \$2,500 in cash. Antonelli tells you  
7 that he supplied the eighth -- that's four ounces -- but that  
8 Trabacchi came up \$1,800 short. Antonelli is sitting in jail,  
9 Mr. Rosenthal at great length elicited his history of coopera-  
10 tion and his cessation of cooperation and then the resumption  
11 of cooperation.

12 Now, while the man is sitting in jail, facing  
13 twenty-five years in prison, I guess one has an opportunity  
14 to think back over all the deals one has done and when  
15 admittedly, belatedly, in Antonelli's own words, he told the  
16 authorities about Trabacchi, I submit to you he had a great  
17 motive.

18 He had been beaten by Trabacchi out of \$1, 800  
19 and here he was sittin in jail and the guy who owed him money  
20 was out on the street.

21 Now, if you think that is something uncomplimentary  
22 about Antonelli, what does that make Trabacchi? It makes him  
23 a junk dealer who doesn't even pay for the junk he gets and  
24 distributes.

25 Ladies and gentlemen, you are going to have to



1 jbbbr 2

2 just argued to you. Reading from October 28, 1969, once  
3 again, Bobby Maher the surveillance target, at 9 p.m., subject  
4 leaves residence and drives to Dan's Bar & Grill, 186 Hughes.

5 In the next day, October 9, 1969, at 9:20 p.m.,  
6 subject, Bobby Maher, drives to Dan's Bar & Grill, 186th  
7 and Hughes.

8 Do you think that is coincidental, that Bobby  
9 Maher, at approximately 9 o'clock in the evening, is going  
10 to Dan's Bar & Grill? Do you think he is going there for  
11 a beer or do you think he is going there to meet some  
12 characters to pick up some money to set up some more  
13 deals.

14 In closing I want to share one thought with you.  
15 I would like you to give very serious consideration to the  
16 fact that the laws of this country are not self-executing.  
17 That is why your job in this courtroom is so important.  
18 In a very real sense, although the federal laws are enacted  
19 by the Congress, they are never enforced until a court of  
20 law and a jury like yourselves see to it that they are  
21 enforced. As the jurors in this case, that is your respon-  
22 sibility.

23 I trust that on the evidence before you, your  
24 collective judgment is that there have been very serious  
25 violations of federal law here and the way to show that is

by living up to your oath and returning verdicts of guilty against both of these defendants and by doing that what you will be doing and what you will be saying is that when I have something to do about it and justice is placed in my hands, no one, large or small, puts himself above the law and gets away with it.

Thank you.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: Can we have a 5-minute recess, your Honor?

THE COURT: Is there any reason why we can't go ahead? I would like to finish the summations this afternoon.

MR. ROSENBERG: All I want is two or three minutes.

THE COURT: Who is going to sum up first?

All right, take a couple of minutes.

MR. ROSENTHAL: Your Honor, before Mr. Rosenberg gets ready, I would like to make an application on the record.

(At the side bar.)

MR. ROSENTHAL: I just wanted to note my objection to Mr. Gold's summation, the tenor of which I think is really improper under *Berger v. The United States*, placing the jurors as enforcers of law. They are judges of the fact and the entire summation is improper. I think that remarks



1 jbbbr 4

2 like the narcotics money business, the beat the habit cold  
3 turkey is not on the record. I think that is unfair comment.  
4 I think that the United States Government should not make such  
5 comments and I think the Supreme Court has spoken about the  
6 entire summation. It was inflammatory and unfair and I ask  
7 for a mistrial on the summation.

8 THE COURT: To the extent that it is necessary to  
9 remind the jury that they are the judges of the facts,  
10 that you may be assured will appear in the charge.

11 To the extent that you have sought to bring in  
12 something that appears in some highly venerable opinion,  
13 it is remote and inapplicable. In my judgment, as the  
14 Judge sitting during the trial and appraising the evidence,  
15 I think that the summation was restrained, dignified and did  
16 not exceed the evidence or the fair intendments and infer-  
17 ences to be drawn from the evidence. The characterization  
18 to which you refer, namely, cold turkey, is a euphemistic  
19 phrase, well known and employed in ordinary conversation  
20 and represents nothing more than a reasonable exercise  
21 of semantics. The application is denied.

22 (In open court.)

23 THE COURT: Would you like to take a 5-minute  
24 recess, ladies and gentlemen?

25 (Recess.)

1 jbbbr

2 Mr. Rosenthal have both told you what is an obvious fact,  
3 namely that the standard of proof in this case is proof  
4 beyond a reasonable doubt. That is a burden the government  
5 has faced without an instant's hesitation. It is a burden  
6 which I submit we have met in this case with overwhelming  
7 and inescapable proof.

8 At the end of two defense summations I gather that  
9 the current defense to this charge on the evidence before  
10 you is, No. 1, there is no compelling reason for Trabacchi  
11 to have ever gone into business with Rossi in the fall of  
12 1970. Most preposterous of all, is the possibility, unsupported  
13 by a single shred of evidence, that Wohlfeld and Brooks  
14 went to Rossi's butcher shop and while they were at the  
15 butcher they used to go over to Trabacchi's for beer and,  
16 finally, that the core proof that Antonelli and Depasquale  
17 told nothing but lies is the fact -- the fact, not the  
18 claim -- the fact that Mr. Riccio was incarcerated during  
19 the feast of 1970.

20 What I propose to do in the next two minutes is  
21 to show you the emptiness of those claims. First, let us  
22 talk about Mr. Riccio and the feast of 1970. And make no  
23 mistake about it. As I told you in my opening, I told you  
24 on my first summation -- it is very difficult to pinpoint  
25 dates in this case. I don't make any claim that any event



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2 of the shop. Take a look at Government's Exhibit 3,  
3 the 1969 Oldsmobile that Mr. Antonelli saw in 1970 and ask  
4 yourselves whether cars don't get registered late and are  
5 therefore on the street illegally.

6 A few minutes ago, Mr. Rosenthal told you that  
7 Doris had a great motive to lie here. I listened with some  
8 care and I didn't hear him even suggest a single motive for  
9 your consideration. I suggest there is none and there  
10 is no reason to give it another moment's thought. She simply  
11 has no axe to grind. She gave you her very best recol-  
12 lection.

13 Now, on this theory that Mr. Twohill's surveillance  
14 testify about Wohlfield and Brooks going to Manhattan Beer  
15 in 1972 is meaningless because of the possibility that they  
16 were all customers of Rossi's father's butcher shop and  
17 Trabacchi, I ask you to consider why didn't either defense  
18 attorney ask a single question on cross examination to prove  
19 that. Not one. They didn't dare.

20 Ladies and gentlemen, I want to make one more  
21 reference to Government's Exhibit 7 because Mr. Rosenberg,  
22 I believe, tried to sneak something by you.

23 Mr. Rosenberg, in his summation, told you that  
24 Government's Exhibit 7 is documentary proof that Mr. Riccio  
25 could not have been on the street. It is absolutely untrue

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UNITED STATES OF AMERICA

v.

75 Cr. 262

ANGELO TRABACCHI and RONALD RICCIO

April 17, 1975  
11:00 a.m.

- - -

THE CLERK: The Court is about to charge the jury. Any spectators wishing to leave the courtroom will do so now or remain seated until the completion of the Court's charge.

Marshal, please lock the door.

THE COURT: Mr. Erkowitz, would you come up a minute, please?

(At the bench with the Court only.)

THE COURT: The marshal has reported to me that you had occasion to have a conversation with the defendant Trabacchi.

MR. ERKOWITZ: Well, he is right in that respect, but it was no conversation. It was too smokey in there so I --

THE COURT: Well, did you have occasion to talk to him with him?

MR. ERKOWITZ: Yes. He offered to give me his seat so I told him, "No, thanks. I think I'll be going home



1 jblt

2 soon. That's the whole thing.

3 THE COURT: All right. Well, I will excuse you  
4 from further participation in the jury.

5 MR. ERKOWITZ: All right. I mean it was nothing  
6 the way -- I didn't know you are not allowed to --

7 THE COURT: Well, Mr. Erkowitz, there is a rule  
8 around the court that it is not only evil, but the appearance  
9 is entirely wrong for you to have a conversation with a  
10 defendant on trial.

11 MR. ERKOWITZ: I'm sorry.

12 THE COURT: Just be assured of this, the other  
13 three are going to be excused in the next forty-five minutes  
14 anyhow, so there is no real reason why you need to detain  
15 yourself. You can go ahead now. Thank you very much for your  
16 services.

17 MR. ERKOWITZ: I am sorry. It was no --

18 THE COURT: It's all right.

19 (End of side bar conference.)  
20  
21  
22  
23  
24  
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UNITED STATES OF AMERICA  
vs.

75 Cr 262

ANGELO TRABACCHI

(Pollack, J.)

April 17, 1975

CHARGE OF THE COURT

THE COURT: Now, Mrs. Alstadt and ladies and gentlemen of the jury, I will now give you instructions on the basis of which you will consider the case that you have heard. Briefly stated, the government contends that the defendants were members of a conspiratorial partnership -- were some of the members of a conspiratorial partnership -- to engage in violations of the narcotics laws.

The defendants have pleaded not guilty. They are entitled, under that plea as I will explain to you, to the presumption of innocence until you have decided that they have been proved guilty beyond a reasonable doubt.

In order to return a verdict of not guilty or guilty in this case, it must be unanimous. Each juror must agree to it. The verdict must represent each juror's individual judgment. It is your exclusive function to determine the facts on the basis of your consideration of the evidence. It is your duty to accept my instructions as to the law to be followed in this case. You will then apply these instructions on the law to the facts as you find them



1     jb-2

2     and decide whether or not the defendants on trial, or either  
3     of them before you, is guilty of the charges that have been  
4     made against him in this indictment.

5             Through the arguments of counsel, you have learned  
6     the conclusions which each party believes should be drawn  
7     from the evidence presented to you. You must remember, how-  
8     ever, that the statements of counsel are not evidence and  
9     must not be considered as such. It is your recollection of  
10    the facts that counts here. It is for you to determine the  
11    weight that you will give to the evidence; you will determine  
12    the credibility that you will extend to the witnesses who  
13    testified and the reasonable inferences that are to be drawn  
14    from the evidence that has been received.

15            No inference of guilt or innocence of the  
16    defendant on trial or as to the credibility of any witness  
17    should be drawn from any rulings, any comments, any questions  
18    that I may have made or asked during the trial. It was neither  
19    my intention nor my function to favor one side or the other  
20    or to criticize any question or any answer or to imply that  
21    I have any views as to the credibility either of the witnesses  
22    or the guilt or the innocence of the defendants. To the extent  
23    that anything of the sort was done or crept into the trial,  
24    it was inadvertent and you are to completely disregard it  
25    and not be influenced by it in any way.

1 jb-3

2 As I have said, the defendants pleaded not guilty  
3 to the indictment. That means that the government has the  
4 burden of proving guilt beyond a reasonable doubt with respect  
5 to each element of the crime that the defendant is accused of  
6 having committed. A defendant in our courts does not have to  
7 prove his innocence. He does not have to submit any evidence  
8 on the subject of his innocence or any evidence at all, if he  
9 doesn't want to. He does not have to testify on his own  
10 behalf and no inference may be drawn from his failure to  
11 testify.

12 A defendant is presumed to be innocent and that  
13 presumption continues throughout the trial and right through  
14 your deliberations. It is only overcome when you have deter-  
15 mined on the basis of your resolution of the facts that guilt  
16 was established beyond a reasonable doubt on each element  
17 of the crime charged.

18 Reasonable doubt does not mean only a scintilla  
19 of a doubt; it means a doubt which is sufficient to cause  
20 a prudent person to hesitate to act in a matter of importance  
21 to himself or herself. If the evidence which you believe is  
22 such as would induce a prudent person to act without hesitation  
23 in a matter of importance to himself or herself, then you may  
24 say you have been convinced beyond a reasonable doubt.

25 Speculative motions or possibilities resting on



1     jb-4

2     mere conjecture not arising or deducible from the proof should  
3     not be confused with reasonable doubt. A doubt suggested  
4     by the ingenuity of counsel or even your own ingenuity, not  
5     legitimately warranted by the evidence or the want of it, is  
6     not what is meant by reasonable doubt.

7             If, on the other hand, your mind is wavering or  
8     uncertain to the point where you have a doubt that would cause  
9     a prudent person to hesitate in a matter of importance to  
10    him or her, then you have not been convinced beyond a  
11    reasonable doubt.

12            The government contends that its evidence estab-  
13    lishes each defendant's guilt beyond a reasonable doubt.  
14    The defendants contend that no evidence has overcome the  
15    presumption of their innocence and that at least there is  
16    a reasonable doubt of guilt. You will apply to all the  
17    evidence the same standard of proof to satisfy yourself of  
18    the guilt of the defendant beyond a reasonable doubt or else you  
19    must acquit him.

20            You must make your own evaluation of the evidence  
21    and determine the credibility which you choose to give to  
22    such evidence. In weighing the testimony of the witnesses  
23    you may consider any relationship of the witness to the parties  
24    and any bias that you perceived, if any, or interest in the  
25    outcome of the case. You may consider the witness' candor

1     jb-5

2     while testifying -- that is, whether the witness equivocated  
3     or whether the witness was frank and straightforward, the  
4     extent to which the witness has been corroborated or contra-  
5     dicted by other credible evidence or circumstances or  
6     inconsistencies within the testimony.

7             In this case, it has been shown that certain  
8     witnesses hoped to gain personal benefits from their alleged  
9     cooperation with the authorities. The jury will have to  
10    say whether they have thus been motivated to tell the truth  
11    or to tell falsehoods to gain personal benefit. The fact that  
12    a witness stands to gain something for himself by his  
13    appearance on the stand does not automatically or necessarily  
14    mean that he is falsifying. It may be that he has come  
15    forward with information that is truthful which, but for some  
16    personal inducement, he might not reveal or wish to disclose.  
17    Motivation to testify because of its rewards does not  
18    necessarily stamp testimony as untrue.

19            On the other hand, disclosures thus motivated may  
20    be untrue and therefore the testimony must be scrutinized  
21    with care and caution to ascertain where the truth lies under  
22    all the facts and circumstances in the evidence. We are not  
23    engaged in a popularity contest here; you are here to find  
24    the truth.

25            In addition to testifying that they hoped for and



1     jb-6

2     expect personal benefit from their testimony, the witnesses--  
3     Rossi, Depasquale and Antonelli -- have testified that they  
4     were participants themselves in the alleged conspiracy and  
5     that they allegedly were accomplices of these defendants.

6             There is no requirement in the Federal Courts that  
7     the testimony of an alleged accomplice be corroborated. A  
8     conviction may rest upon the uncorroborated testimony of an  
9     accomplice if you believe the material parts of it and find  
10    it credible.

11            The fact that a witness is an accomplice, a  
12    participant in the alleged crime, may be considered by you  
13    as bearing upon his credibility. However, it does not follow  
14    that merely because a person has acknowledged participation in  
15    crimes charged against the defendants he is incapable of  
16    telling the truth about his involvement therein. His testimony,  
17    however, should be viewed with great caution and scrutinized  
18    with great care.

19            You may not draw any inference favorable or  
20    unfavorable towards the government or the defendant on trial  
21    from the fact that certain persons were not named as  
22    defendants or, having been named, are not on trial before you  
23    now. These matters are wholly outside your concern and have  
24    no bearing on your function as jurors.

25            If you believe a witness has testified falsely

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1 jb-7

2 before you, you are privileged to disregard his testimony or  
3 her testimony in whole or in part. The reason for this is that  
4 a witness may be falsifying about part of what he or she says  
5 and may be telling the truth about other parts. The witness  
6 may be mistaken in part and be accurate in other parts. It is  
7 for you to decide after you have scrutinized and weighed the  
8 testimony and the other evidence what you believe should be  
9 credited.

10 The law recognizes two types of evidence -- direct  
11 and circumstantial -- either of which may be sufficient to  
12 convict, providing the jury upon all the evidence is satisfied  
13 beyond a reasonable doubt.

14 In the determination of whether the defendant is  
15 guilty or not guilty, you must bear in mind that guilt is  
16 personal. Whether the defendant on trial before you whom you  
17 are considering is guilty or not guilty must be determined  
18 separately with respect to him solely on the evidence pre-  
19 sented against him, or the lack of evidence. The case as to  
20 each defendant stands or falls on the proof or lack of  
21 proof of the charge against him and not against somebody else.

22 The indictment in this case reads as follows:

23 The Grand Jury charges:

24 1. From on or about the 1st day of January, 1968,  
25 and continuously thereafter up to and including the first day



1     jb-8

2     January, 1973, in the Southern District of New York, Angelo  
3     Trabacchi and Ronald Riccio, the defendants, and Raymond  
4     Antonelli, Santiago Olivero, Andrew Depasquale, Albert Rossi,  
5     Robert Maher and Doris Torres Olivero, named herein as  
6     co-conspirators but not as defendants, and others to the grand  
7     jury unknown, unlawfully, wilfully, intentionally and  
8     knowingly combined, conspired, confederated and agreed together  
9     and with each other to violate Section 173 and 184 of Title  
10    21 of the United States Code and Section 812, 841(a)(1) and  
11    841(b)(1)(a) of Title 21, United States Code.

12             Let me pause for a minute and say to you, don't  
13     try to remember those numbers; they are not important. They  
14     are just illustrative of what is being charged.

15             2. It was part of said conspiracy that the said  
16     defendants and co-conspirators unlawfully, wilfully and  
17     knowingly would receive, conceal, buy, sell and facilitate  
18     the transportation, concealment and sale of a quantity of  
19     narcotic drugs, the exact amount and nature thereof being to  
20     the grand jury unknown, after the said narcotic drugs had been  
21     imported and brought into the United States contrary to law,  
22     knowing that the said narcotic drugs had been imported and  
23     brought into the United States contrary to law in violation of  
24     Section 173 and 184 of Title 21 of the United States Code.

25             3. It was further part of said conspiracy that

1       jb-9

2       the said defendants and co-conspirators unlawfully, wilfully,  
3       intentionally and knowingly would distribute and possess with  
4       intent to distribute Schedule I narcotic drug controlled  
5       substances, the exact amount thereof being to the grand jury  
6       unknown, in violation of Sections 812, 841(a)(1) and  
7       841(b)(1)(a) of Title 21, United States Code.

8               Overt Acts:

9               In pursuance of the said conspiracy and to effect  
10       the objects thereof, the following overt acts were committed  
11       in the Southern District of New York and elsewhere:

12               1. In or about the winter of 1968, defendant  
13       Angelo Trabacchi met with co-conspirator Santiago Olivero.

14               2. In or about the spring of 1969, defendant  
15       Angelo Trabacchi delivered a quantity of heroin to  
16       co-conspirator Santiago Olivero.

17               3. In or about the spring of 1969, the defendant  
18       Angelo Trabacchi gave co-conspirator Santiago Olivero a  
19       quantity of heroin in a beer case.

20               4. In or about the spring or summer of 1969,  
21       the defendant Angelo Trabacchi gave to co-conspirator Santiago  
22       Olivero various amounts of heroin in beer cases.

23               5. In or about the summer of 1969, the defendant  
24       Angelo Trabacchi and co-conspirator Robert Maher and Santiago  
25       Olivero had a meeting in the vicinity of the Manhattan Beer



1     jb-10

2     Distributorship, located between 109th and 110th Street and  
3     First Avenue, New York, New York.

4             6. In or about the fall of 1969, the defendant  
5     Angelo Trabacchi and co-conspirators Robert Maher and Santiago  
6     Olivero had a meeting at Dan's Bar and Grill at 186th Street  
7     and Hughes Avenue, Bronx, New York.

8             7. In or about the fall of 1970, the defendant  
9     Angelo Trabacchi and co-conspirator Albert Rossi obtained and  
10    distributed approximately one kilogram of heroin.

11            8. In or about the fall of 1970, the defendant  
12    Angelo Trabacchi, while in the vicinity of the Manhattan Beer  
13    Distributorship, between 109th and 110th Street and First  
14    Avenue, New York, New York, had a conversation with  
15    co-conspirator Raymond Antonelli as to the purchase by the  
16    defendant Trabacchi of one-eighth of a kilogram of heroin  
17    for \$2500.

18            9. In or about the fall of 1970, the defendant  
19    Angelo Trabacchi, while in the vicinity of the Manhattan Beer  
20    Distributorship between 109th and 110th Street and First  
21    Avenue, New York, New York, paid co-conspirators Raymond  
22    Antonelli and Andrew Depasquale \$2500 for approximately one-  
23    eighth kilogram of heroin.

24            10. In or about the fall of 1970, the defendant  
25    Ronald Riccio met co-conspirator Raymond Antonelli in the

1 jb-11

2 vicinity of the Delightful Coffee Shop at 116th Street, New  
3 York, New York, and had a conversation.

4 11. In or about the fall of 1970, the defendant  
5 Angelo Trabacchi, while in the vicinity of the Manhattan Beer  
6 Distributorship between 109th and 110th Street and First  
7 Avenue, New York, New York, received from co-conspirators  
8 Raymond Antonelli and Andrew Depasquale, approximately 18  
9 kilograms of heroin.

10 12. In or about the fall of 1970, while in the  
11 vicinity of the Manhattan Beer Distributorship between 109th  
12 and 110th Street and First Avenue, New York, New York, the  
13 defendant, Ronald Riccio, tested a quantity of heroin for the  
14 defendant Angelo Trabacchi, said heroin having been delivered  
15 by co-conspirators Raymond Antonelli and Andrew Depasquale.

16 13. In or about the fall of 1970, while in the  
17 vicinity of the Manhattan Beer Distributorship between 109th  
18 and 110th Street and First Avenue, New York, New York, the  
19 defendant Angelo Trabacchi had a discussion with co-conspirator  
20 Raymond Antonelli with respect to Trabacchi selling  
21 co-conspirator Antonelli one-eighth of a kilogram of heroin  
22 for \$2500.

23 14. In or about the spring of 1971, the defendant  
24 Angelo Trabacchi received from co-conspirator Albert Rossi  
25 while in the vicinity of the Ebb Tide Bar, Castle Hill Avenue



1     jb-12

2     Bronx, New York, approximately two kilograms of heroin.

3             If you want the indictment, you can send for it  
4     in the jury room.

5             As you can see, the indictment charges the  
6     defendants with violations of the federal narcotics laws. In  
7     our federal system, there are no crimes other than those  
8     defined or created by statute, by laws written by Congress  
9     and, so, in this case, as in all others, the charges against  
10    these defendants are made under certain federal laws passed by  
11    the Congress.

12            Because the period charged in this indictment runs  
13    from 1968 to 1973, we are concerned basically with two  
14    federal narcotics laws; one that was in force until May 1,  
15    1971, and another which became effective on May 1, 1971,  
16    thereby replacing the earlier law.

17            The law which was in effect up to May 1, 1971,  
18    provides in part, whoever fraudulently or knowingly imports  
19    or brings any narcotic drug into the United States contrary  
20    to law or receives, conceals, buys, sells or in any manner  
21    facilitates the transportation, concealment or sale of any  
22    such narcotic drug after being imported or brought in, knowing  
23    the same to have been imported or brought into the United  
24    States contrary to law or conspires to commit any of such  
25    acts in violation of the laws of the United States shall be

1 jb-13

2 punished as provided.

3 It is unlawful to import or bring any narcotic  
4 drug into the United States except such amounts as the  
5 Commissioner of Narcotics finds to be necessary to provide  
6 for medical and legitimate uses.

7 You will note that under these laws it is not only  
8 the sale of illegally imported narcotics or conspiring to  
9 make sales that is prohibited. The law condemns other  
10 activities as well and the commission of any one of such  
11 activities constitutes a crime whether one sells or facilitates  
12 the sale of narcotics or receives, conceals or transports  
13 narcotics or conspires with another to do any of these.

14 Effective May 1, 1971, these provisions were re-  
15 placed by others which were part of an act that is known  
16 as the Comprehensive Drug Abuse Prevention and Control Act  
17 of 1970, another act whose name you don't have to remember.

18 The provisions effective May 1, 1971, forbid the  
19 distribution or possession with intent to distribute certain  
20 kinds of narcotics drugs in schedules of so-called controlled  
21 substances or conspiring with another to commit those acts.  
22 Heroin is one of the controlled substances in Schedule I of  
23 that law.

24 Under the law both before May 1971 and after  
25 May 1971, it has been a crime to conspire to violate the



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2 federal narcotics laws then in effect. "Conspire" means to  
3 plan to scheme, to plot.

4 As I have said, this indictment charges the  
5 conspiracy mentioned therein and that the conspiracy had as  
6 its objects violation of both the old statute and of the  
7 new statute following May 1, 1971. One object of this alleged  
8 conspiracy was a violation of the statutes in effect until  
9 May 1971, which prohibited anyone from receiving, concealing,  
10 selling or in any way facilitating the transportation, con-  
11 cealment or sale of narcotics, knowing that the narcotics had  
12 been illegally imported into the United States.

13 A second object of the conspiracy charged here,  
14 and this would relate to the period after May, 1971, was to  
15 violate the recent statute which forbids the distribution or  
16 possession with intent to distribute narcotic controlled  
17 substances, including heroin.

18 The government charges in this indictment that  
19 throughout the period 1968 to 1973 the defendants were members  
20 of a conspiracy with each other and with others, the objective  
21 of which was to engage in the sale and distribution of heroin.  
22 The indictment charges that the conspiracy to violate the  
23 laws occurred by agreeing -- one, with each other; two, with  
24 any one or more of the alleged co-conspirators Santiago  
25 Olivero, Robert Maher, Doris Olivero, Andrew Depasquale, and

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2 Raymond Antonelli, Fred Wohlfeld and Albert Rossi and with  
3 others whose identities were unknown to the grand jury --  
4 to buy or sell or receive or possess or transport or distribute  
5 heroin, in violation of federal law.

6 A conspiracy or scheme or plot to commit a crime  
7 is an entirely separate and distinct offense from the  
8 substantive crime which is the objective of the conspiracy,  
9 the substantive crime being actually doing it, actually  
10 carrying it out. The essence of the crime of conspiracy  
11 is an agreement or understanding to violate the laws. If  
12 a conspiracy exists, even if it fails of its purpose it is  
13 punishable as a crime.

14 Consequently, to prove a conspiracy there is no  
15 need for the government to prove an actual violation of the  
16 narcotics laws, an actual sale, an actual transportation,  
17 any one of the actual things that I have already mentioned.

18 A conspiracy, which sometimes is referred to as  
19 a partnership in crime, involves combined action and presents  
20 a greater potential threat to the public interest than the  
21 illicit activity of a single individual. Group association  
22 or organized activity renders detection more difficult than  
23 the activity of a single wrongdoer. It was for these and  
24 other reasons that Congress made the crime of conspiracy  
25 entirely separate, distinct and different from the violation



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2     of the law or laws which may be the objective of the conspiracy.

3             Before you may convict a defendant of the conspiracy  
4     charged in this indictment, each of the following essential  
5     elements must be established as to him beyond a reasonable  
6     doubt:

7             First, you must find the existence of the conspiracy  
8     charged;

9             Second, you must find that the defendant under  
10    consideration knowingly and wilfully associated himself with  
11    the conspiracy;

12            Third, you must find that one of the persons named  
13    as a co-conspirator -- any one of them, whether a defendant  
14    or not -- committed at least one of the overt acts set forth  
15    in the indictment at or about the time and place alleged.

16            If the government fails to establish each essential  
17    element as to a defendant, you must acquit that defendant.  
18    If the government establishes each essential element as to a  
19    defendant, your duty is to convict that defendant.

20            The gist of the crime of conspiracy is an unlawful  
21    combination or agreement to violate the law. Whether or  
22    not a defendant accomplished what it is alleged he conspired  
23    to do is immaterial to the question of his guilt or innocence.  
24    In a conspiracy, which, as I have said, is referred to as a  
25    partnership in criminal purposes, each member becomes the

1       jb-17

2       agent of every other member.

3               To establish a conspiracy, the government is not  
4       required to show that two or more persons sat around a table  
5       and entered into a solemn compact orally or in writing,  
6       stating that they have formed a conspiracy to violate the law,  
7       setting forth details of the plans, the means by which the  
8       unlawful project is to be carried out or the part to be played  
9       by each conspirator, whether large or small. Indeed, it would  
10      be extraordinary if there were such a formal document or a  
11      specific oral agreement.

12             Your common sense will tell you that when persons  
13      undertake to enter into a criminal conspiracy, much is left  
14      to the unexpressed understanding. Conspirators usually do not  
15      reduce their agreements to writing or acknowledge them before  
16      a notary public, nor do they publicly broadcast their plans.  
17      By its very nature, a conspiracy is almost invariably in its  
18      origin and execution kept secret.

19             It is sufficient if two or more persons in any  
20      manner, through any contrivance, impliedly or tacitly,  
21      came to a common understanding to violate the law. Express  
22      language or specific words are not required to indicate assent  
23      or attachment to a conspiracy.

24             In determining whether there has been an unlawful  
25      agreement, you may judge acts and conduct of the alleged



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2   co-conspirators which are done to carry out an apparent  
3   criminal purpose. The adage "actions speak louder than words"  
4   is applicable here.

5               Usually, the only evidence available is that of  
6   disconnected acts which, however, when taken together in  
7   connection with each other show a conspiracy to secure a  
8   particular result as satisfactorily and conclusively as  
9   more direct proof.

10              The offense is complete when the agreement is  
11   made and any single overt act to effect the object of the  
12   conspiracy is thereafter committed by at least one of the  
13   conspirators. Proof concerning the accomplishment of the  
14   objects of the conspiracy may be the most persuasive evidence  
15   of the existence of the conspiracy itself

16              Success of the venture, if you believe it was  
17   successful, may be the best proof of the existence of the  
18   agreement. In determining whether the conspiracy charged in  
19   this indictment actually existed, you may consider the evidence  
20   of the acts and conduct of the alleged conspirators as a whole  
21   and the reasonable inferences to be drawn from such evidence.

22              If, upon such consideration of the evidence you  
23   find beyond a reasonable doubt that the minds of the alleged  
24   conspirators met in an understanding way and that they agreed,  
25   as I have explained a conspiratorial agreement to you, to  
   work together in furtherance of the unlawful scheme alleged

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2 in the indictment, then proof of the existence of the  
3 conspiracy is complete.

4 If you do conclude that a conspiracy as charged  
5 in the indictment did exist, you must next determine whether  
6 the defendants on trial were members of that conspiracy -- that  
7 is, whether they participated in the conspiracy with knowledge  
8 of its unlawful purposes and in furtherance of its unlawful  
9 objectives. To find a defendant's membership in a conspiracy,  
10 you must find that he knowingly and intentionally participated  
11 therein. Thus, mere knowledge by a defendant of the existence  
12 of the conspiracy or of an illegal act on the part of an  
13 alleged conspirator or mere association with one or more  
14 conspirators is not sufficient to establish membership in the  
15 conspiracy.

16 The government must establish beyond a reasonable  
17 doubt that the defendant, aware of its basic purposes and  
18 objects, entered into the conspiracy with a specific criminal  
19 intent -- that is, with the purpose of violating the law.

20 So, if a defendant, with understanding of the  
21 unlawful character of the conspiracy intentionally engages,  
22 advises or assists for the purpose of furthering the illegal  
23 undertaking, he thereby becomes a knowing and wilful  
24 participant -- a conspirator.

25 In determining whether a defendant was a member of



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2 the conspiracy, you may consider all of the evidence before  
3 you.

4 The guilt of a conspirator is not governed by the  
5 extent or duration of his participation in the conspiracy or  
6 whether he had knowledge of all of its operations. Even if  
7 one joined the conspiracy after it was formed and was engaged  
8 in it to a degree more limited than that of other  
9 co-conspirators, he is equally guilty so long as he was a  
10 conspirator.

11 Each member of a conspiracy may perform separate  
12 and distinct acts at different times and different places.  
13 Thus, some conspirators may play major roles while others play  
14 minor parts. In other words, it is not required that a person  
15 be a member of the conspiracy from its very start. He may  
16 join it at any point during its progress and be held respon-  
17 sible for all that has been done before he joined and all that  
18 may be done thereafter, during its existence or while he  
19 remains a member.

20 Simply stated, using the partnership analogy, by  
21 becoming a partner he assumes all of the liabilities of the  
22 partnership, including those that occurred before he became  
23 a member.

24 Assuming that you find that the alleged conspiracy  
25 existed and that the defendants were members of that conspiracy,

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there is a third question -- that is the requirement of an overt act.

An overt act is an open act -- out in the open where it can be seen -- any step, action or conduct which is taken to achieve, accomplish or further the objective of the conspiracy. The overt act doesn't have to be necessarily a criminal act nor the very crime which is the object of the conspiracy. It may be a perfectly lawful act, if it is in furtherance of the conspiracy.

The purpose of requiring proof of an overt act is that while parties might conspire and agree to violate the law, they may change their minds and do nothing to carry it out and to carry it into effect, in which event it will not constitute an offense.

Obviously, for Maher and Trabacchi and Santiago Olivero to meet may in itself be innocent conduct but if, as the government contends, they met and discussed the distribution of narcotics, then this meeting sheds its innocent appearance. So, while the meeting may have been innocent if the purpose was in furtherance of the conspiracy, the meeting sheds its innocent appearance; it is an overt act by alleged conspirators in furtherance of the objectives of the conspiracy.

It is not necessary for the government either to

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2     allege or to prove every overt act that may have occurred in  
3     the course of the conspiracy. Otherwise, the total history  
4     of everything that took place constituting overt acts would  
5     have to be set out in the indictment and there is no such  
6     requirement; nor is it necessary for the government to prove  
7     that each member of the conspiracy committed or participated  
8     in any particular overt act since the act of any one, whether  
9     a defendant or not, so long as he is a co-conspirator, done  
10    in furtherance of the conspiracy within the course of its  
11    existence becomes the act of all the other members.

12               The government is not required to prove each  
13    and every one of the overt acts alleged in the indictment.  
14    It is sufficient if the government proves the commission of  
15    only one -- at least one -- of the acts in the Southern District  
16    of New York, which includes the City of New York, at or  
17    about the time alleged. The overt act need not have occurred  
18    at the precise time or place alleged.

19               While the indictment charges that the conspiracy  
20    existed from on or about the first day of January 1968 and  
21    continuously thereafter up to and including January 1973,  
22    it is not essential that the government prove that the con-  
23    spiracy started and ended on or about those specific dates.  
24    It is sufficient if you find that in fact a conspiracy was  
25    formed and existed for some time within the period set forth

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2   in the indictment and that at least one of the overt acts was  
3   committed in furtherance thereof within that period.

4           A conspiracy, once formed, is presumed to have  
5   continued until its objectives are accomplished or there is  
6   an affirmative act of termination by its members or it is  
7   otherwise terminated. So, too, once a person is found to be  
8   a member of a conspiracy he is presumed to continue his  
9   membership until its termination, unless there is an  
10   affirmative proof offered of withdrawal or dissociation.

11           We are almost through.

12           When people enter into a conspiracy to accomplish  
13   any unlawful purpose, they become agents for one another in  
14   carrying out the conspiracy. Hence, the acts or declarations  
15   of any conspirator in the course of the conspiracy and in  
16   furtherance of the common purposes are deemed to be the acts  
17   of all conspirators and all are responsible for such acts.  
18   Accordingly, if you find in accordance with these instructions  
19   that the alleged conspiracy existed and that the defendants  
20   or alleged co-conspirators were participants in it, then  
21   acts done and statements and declarations made in furtherance  
22   of the conspiracy by any persons found by you to have been a  
23   member of the conspiracy may be considered against any defendant  
24   whom you find was a member, even though such acts or  
25   declarations were made in the absence of and without the



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2     knowledge of that defendant.

3             It is important to note that this principle  
4     applies only to the acts and declarations done or made  
5     during the continuance of the conspiracy and in furtherance  
6     thereof; that is, to carry out an unlawful objective or  
7     purpose of the conspiracy. It does not apply to acts or  
8     declarations which do not have those characteristics.

9             One final word about the conspiracy count. You  
10    will notice that it alleges in part an agreement to deal in  
11    illegally imported narcotics. You must be satisfied that  
12    the agreement contemplated illegally imported drugs and that  
13    the defendant under consideration knew this. You may find  
14    this element if you conclude from the proof that a defendant  
15    has actual knowledge that the drugs contemplated were to be of  
16    foreign origin or, if you find a particular defendant to have  
17    had possession of heroin, you may infer his knowledge from  
18    the fact of such possession.

19            The reason for that alternative is this: Recent  
20    official investigations and congressional findings indicate  
21    that all heroin found in the United States has been illegally  
22    imported into the country because heroin is not produced  
23    domestically and it is illegal to import heroin or products  
24    from which heroin is derived. From these facts, it is  
25    reasonable to infer that any heroin found here has been

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2 illegally imported.

3 Now, under your oath as jurors, you cannot allow  
4 consideration of the punishment which may be inflicted upon  
5 a defendant if convicted to influence your verdict in any  
6 way or in any sense enter into your deliberations. The  
7 duty of imposing sentence rests exclusively upon the Court.  
8 Your function is to weigh the evidence in the case and to  
9 determine the guilt or innocence of the defendants solely upon  
10 the basis of such evidence and the law.

11 You are to decide the case upon the evidence and  
12 the evidence alone. You must not be influenced by any  
13 assumption, conjecture or sympathy or any inference not  
14 warranted by the facts until proven to your satisfaction. You  
15 are not hampered by an obligation to decide this case as if you  
16 had to judge a relative of yours. When you were selected as  
17 jurors, you were carefully examined for total absence of any  
18 acquaintance or relationship with anyone in this case.  
19 Your obligation is to be fair and impartial and to decide only  
20 on the facts in evidence.

21 If you find beyond a reasonable doubt that the law  
22 has been violated, you should not hesitate for any reason to  
23 return a verdict accordingly. If you fail to find beyond a  
24 reasonable doubt that the law has been violated, you should  
25 not hesitate for any reason to return a verdict of acquittal.



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2                    You are expected in this case to rely on your  
3      own common sense and general experience in evaluating the  
4      evidence. Under your oath as jurors, you swore with upraised  
5      hand to well and truly try this case and to render a just  
6      verdict on the evidence. That is your duty.

7                    You may request to see any of the exhibits and hear  
8      any of the testimony again if you need it. You will announce  
9      your verdict through Mrs. Altstock, your foreperson. She  
10     will be provided with pencil and paper should you wish to  
11     communicate with the Court.

12                   Please do not communicate with anyone, not even me,  
13     except in writing and have the writing signed by Mrs. Altstock  
14     with her name.

15                   I have now concluded the instructions but I want to  
16     talk to the lawyers, who may wish to call to my attention  
17     something on which I may have misspoken or omitted. Please  
18     relax meanwhile.

19                   (At the sidebar.)

20                   THE COURT: Are there any exceptions?

21                   MR. ROSENBERG: No, sir.

22                   THE COURT: Mr. Rosenthal?

23                   MR. ROSENTHAL: Your Honor, first I would like to --

24                   THE COURT: Do you have any exceptions?

25                   MR. ROSENTHAL: Yes, your Honor. You excluded,

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2 during the charge, when you charged accomplices, that Doris  
3 also was an accomplice. I believe that her name was left  
4 out. Doris Olivero. I object to that portion of the charge  
5 that charged the reason for the conspiracy and I also object  
6 to the use of the example of the meeting at the, I believe it  
7 was, Dan's Bar and Grill, that was used in your Honor's  
8 charge to explain the conspiratorial meeting.

9 Those are all I have.

10 THE COURT: Any exceptions on the part of the  
11 government?

12 MR. GOLD: No.

13 THE COURT: Any additional requests to charge?

14 MR. ROSENBERG: No, sir.

15 MR. GOLD: No, your Honor.

16 MR. ROSENTHAL: No, your Honor.

17 THE COURT: All right.

18 MR. ROSENTHAL: May I place something else on the  
19 record? When you dismissed the alternate juror, I was able to  
20 hear my client's name mentioned during the discussion and I  
21 am sure that if I was able to hear it, the jury was also able  
22 to hear it, so just to protect the record in case any prejudice  
23 occurs and if during the appeal of this case if this comes  
24 up or --

25 THE COURT: What did you hear about your client?



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2 MR. ROSENTHAL: That he spoke to the alternate.

3 THE COURT: Well, what harm is there in excusing  
4 him?

5 MR. ROSENTHAL: Your Honor, I am just trying to  
6 protect my client's record.

7 THE COURT: What are you protecting? The purpose  
8 of making a reference is to call something to a judge's  
9 attention and not to just throw a Squib into the marketplace.

10 MR. ROSENTHAL: I was present outside when the  
11 meeting between -- or the conversation went on between my  
12 client and the alternate juror and all it involved was him  
13 saying something to my client and my client said, "Here, Pop;  
14 have a seat," and that was the extent of the entire  
15 conversation.

16 THE COURT: I am not questioning the fact that you  
17 have sharp ears. If anybody one foot away from where I was  
18 standing at the Bench or sitting at the Bench in discussion  
19 with Mr. Urkowitz heard me, he would have had to have had a  
20 tape recorder with a high-power sensor. There was no  
21 conversation which could possibly have audibly reached more  
22 than two feet from where we were and the jury was as far  
23 distant as you or even further distant.

24 I think the fact of your knowledge of what happened  
25 may have led you to presume what we were talking about, which

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2 is different.

3 (In the presence of the jury.)

4 THE COURT: Inreferring, ladies and gentlemen, to  
5 those who are termed accomplices, I inadvertently omitted  
6 the name of Doris Torres Olivero. I include her in my  
7 reference.

8 (End of the Charge.)



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2 "Do we have to render a verdict (innocent or  
3 guilty) on each overt act?

4 "The third comment is Judge Pollack's definition  
5 of conspiracy."

6 So, I think we are off to the races. Bring in  
7 the jury.

8 (Jury enters the courtroom at 2:40 p.m.)

9 THE COURT: Ladies and gentlemen, I have the note  
10 that you sent in and I will answer these questions separately.

11 Your first question was:

12 "Can we render separate verdicts for each defen-  
13 dant?"

14 The answer is you must render a separate verdict  
15 for each defendant.

16 As I said to you, you must bear in mind that guilt  
17 is personal. Whether the defendant on trial before you whom  
18 you are considering is guilty or not guilty, you must be  
19 determined separately with respect to him, solely on the  
20 evidence presented against him or the lack of evidence in  
21 the case as to each defendant stands or falls on the proof  
22 or lack of proof of the charge against him and not against  
23 somebody else.

24 And I repeat, the form of your verdict will be, as  
25 to the defendant so and so, we find, whatever you find.

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2 As to the defendant so and so, we find, whatever  
3 you find. Not only may you, but you must render a separate  
4 verdict.

5 The next question was:

6 "Do we have to render a verdict on each overt  
7 act?"

8 The answer is you do not render a verdict on an  
9 overt act at all. An overt act, as I explained to you, is  
10 something that occurred in the course of, if you have found  
11 there to be a conspiracy, some act to indicate that this  
12 was more than just in the mind; that it was actually some-  
13 thing that occurred -- whether a guilty act or an innocent  
14 act, criminal act or an innocent act. And you are given  
15 fourteen of these overt acts, one of which -- but only one  
16 of which -- need have been established in order to make a  
17 charge of conspiracy complete.

18 If none of the fourteen things occurred as alleged  
19 then conspiracy has not been proved. If at least one of  
20 them has occurred, it doesn't make any difference whether  
21 the other thirteen did or did not occur.

22 Now, the third question is, definition of  
23 conspiracy.

24 The shortest definition of conspiracy is that it is  
25 a combination of two persons who are scheming to do an



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2 illegal act and what is an illegal act is defined by the  
3 statutes -- sale, possession, transfer and so on and member-  
4 ship in that conspiracy with the intent to participate in a  
5 criminal act.

6 Now, is there any reason, counsel, why I should  
7 expend on the definition of conspiracy any further?

8 MR. ROSENBERG: No, your Honor, but I --

9 THE COURT: Am I requested to add anything by any  
10 one of the three lawyers?

11 MR. ROSENBERG: No, sir.

12 MR. ROSENTHAL: No, your Honor.

13 MR. GOLD: No, your Honor.

14 MR. ROSENBERG: I do have a request at the side  
15 bar.

16  
17 THE COURT: When I said that there must be two  
18 people, I mean at least two people. You can't conspire with  
19 yourself. It has to be with somebody else. You can't have  
20 a partnership by yourself. And it can be any number of people  
21 but it must be at least two.

22 (At the side bar.)

23 MR. ROSENBERG: I request that the Court charge in  
24 view of the question that was asked with respect to overt  
25 acts, that the government must prove beyond a reasonable

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2 doubt that the defendant Riccio's overt act which is in this  
3 case Overt Act number 10, was criminal in nature.

4 THE COURT: I decline to so charge.

5 (In the presence of the jury.)

6 THE COURT: All right, Mrs. Allstate, have I  
7 answered the question as far as you believe?

8 (Forelady nods head up and down.)

9 THE COURT: All right. You may retire with your  
10 jurors.

11 (Jury retired to continue deliberations at 2:50  
12 p.m.)

13 (Note received from the jury at 4:55 p.m..)

14 (Court's Exhibit 3 marked.)

15 THE COURT: I have a note from the jury which  
16 says:

17 "We have reached a verdict."

18 (Jury entered the courtroom at 5:15 p.m.)

19 THE COURT: Call the roll.

20 THE CLERK: Members of the jury, please answer  
21 to your presence as your name is called.

22 (Jury roll called.)

23 THE CLERK: Madam Forelady, have you agreed upon  
24 a verdict?



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1                   Your ~~Foreman~~ then will return an oral verdict  
2 in open court of either guilty or not guilty as to each  
3 defendant on each count where that defendant is named.

4                   Are there any exceptions, gentlemen: If so,  
5 I will hear you at the side bar.

6                   MR. RUSSO: No exceptions, your Honor.

7                   MR. BOBICK: No exceptions, your Honor.

8                   THE COURT: All right. Swear the jury.

9                   The alternates are excused.

10                   (The four alternates were excused and left the  
11 courtroom)

12                   (At 12:47 one marshal was duly sworn)

13                   THE COURT: Your lunch is here.

14                   (At 12:47 p.m. the jury retired to deliberate)

15                   THE COURT: I think you will be safe until

16                   2:15 any way.

17                   MR. BOBICK: Your Honor, I have a situation,  
18 my associate came over from the State Supreme Court. I  
19 have a prisoner in a cell who refuses to leave the cell  
20 until he speaks to me. I am going to go over there and  
21 try and catch him now. If I may be a little later I will  
22 be here by 2:30.

23                   THE COURT: It's all right with me except if  
24 they come back with something. Can your client and you  
25

agree to have Mr. Russo or somebody represent you if the jury hands a note in your absence?

MR. BOBICK: Your Honor, I will be back by 2:15.

THE COURT: All right.



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- (At 3:10 P.M. a note was received from the jury.)

(In the robing room.)

THE COURT: I got a note from the jury, "we are tied up on count one, conspiracy. If we cannot come to a decision on count one, can we continue on count 2, 3, 4 and 5?"

The obvious answer that is yes.

MR. BOBICK: Your Honor, except that in order to allow the testimony of or the statements that Doris made concerning Santiago Olivero, wouldn't it be necessary for them to show that there was a conspiracy first?

THE COURT: No.

MR. VICTOR: Certainly all of the statements which she made with regard to the --

THE COURT: The answer to the question is yes, gentlemen. If they can't reach agreement on one count they can certainly consider the other.

MR. VICTOR: But I was thinking, in addition to that possibly a special instruction with regard to the statements made by the co-conspirator, Santiago Olivero.

Certainly while his statements may have been made admissible on the conspiracy, they are certainly not admissible with regard to the substantive counts.

THE COURT: They were admissible on the conspiracy

count.

"Do we have evidence that Doris Olivero's Cadillac was seen At Manhattan Beer other than Dolores' car?"

I don't know what that means.

MR. BOBICK: I think that means other than Dolores' testimony.

THE COURT: I don't know what it means, and I will tell them I don't know what it means. It isn't clear. All right. Call them in.

MR. BOBICK: I really don't want to press the point, but I know that if they can't agree on one they certainly should be able to go to the other counts. But the point is that if they don't find that there was a conspiracy, then at that point the hearsay statements that were admitted in evidence should not be able to be considered.

If they cannot be considered, then the other counts, they should not be considered in considering the guilt of the defendants on the other counts.

THE COURT: The routine case where you get a failure of proof on one count, it doesn't follow that the evidence is inadmissible.

MR. BOBICK: Except that if the first thing that the jury has to determine --

THE COURT: I will give them the Allen charge. That



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will take care of it, maybe. Get in there and agree on count one, if they can.

(In the courtroom in the presence of the jury.)

THE COURT: I have your note. Your second question isn't at all clear to me.

THE FOREMAN: You want me to ask it?

THE COURT: No; go back and send it again.

On your first question, you can proceed to the other counts, and then I think you should come back to count 1. Take it up, that's all. But you can proceed to the other counts.

THE FOREMAN: The other one we're not stymied.

Do you want me to rewrite the second or not?

THE COURT: Yes. Rewrite the second. And any further notes, I don't want to know how you are standing or what your problems are, other than your questions.

(The jury Left the courtroom.)

(In the robing room.)

THE COURT: I have the other note. You were right.

"Don't we have evidence that Sam and Dolores' car was seen at Manhattan Beer, other than Doris' testimony?"

Answer, no. Is it all right with you if I write:

"No, there is no such evidence -- no other evidence;

Judge MacMahon"?

MR. BOBICK: All right.

that were made. One of the motions is addressed to the dismissal of the indictment based on the decisions that came down.

THE COURT: I will hear the motions now.

MR. BOBICK: Your Honor, so I wouldn't have to repeat the facts involved in this case, it is understood once is enough.

The decisions appear in *Ross v. United States* --

THE COURT: What is the motion?

MR. BOBICK: The motion is to dismiss the indictment on the grounds that the government is guilty of lapses and depriving the defendant of his right to a trial by failing to indict this defendant within a reasonable time after the alleged crime was committed.

THE COURT: Is the motion on the ground that the government has denied him a speedy trial?

MR. BOBICK: The fact that they are asking him now to defend himself --

THE COURT: Mr. Bobick, I am simply trying to understand the basis of your motion. Is it that the government has denied this defendant a speedy trial?

MR. BOBICK: Yes, your Honor. And on the basis of the fact that the alleged violation took place approximately five years before the date of the arrest, and



at this point there is absolutely no showing by the government of any continuing investigation; there is no showing by the government of the fact that there was any reason for the delay between the alleged time of the occurrence and the alleged time of the arrest; and that even according to the 3500 material given to us, your Honor, according to the 3500 material the information that the government has at the present time was available to them back in 1971.

So that under any circumstances there had to be a minimum of two years between the time that the government had the facts and the investigation and the time they made the arrest.

The cases on the point, your Honor, I believe are available to the court: *Ross v. U.S.*, 249 Fed. 2d, 210; *Woody v. United States*, 370 Fed. 2d, 214; *United States v. Nepue*, 401 Fed. 2d, 197; and *James v. United States*, 422 Fed. 2d, 639.

And I also, your Honor, distinguish very clearly between *United States v. Marian*, which does not apply in this case, because the situation in this case was that the alleged material involved in this case was known to the government completely in 1971; that the witness, who was the prime witness the witness that was used, was available to the government since 1971, and there has been no overt act even alleged. The

last overt act charged, your Honor, in the whole conspiracy is charged in 1970 or 1971. I don't want to say that a two-week adjournment. Your Honor, I have a further point, and the point is this, that the defendant would certainly be unable to find out and dispute any data at this point with such short notice. They have to be tied together, the motion for the adjournment and the motion to dismiss. I would join in the Arguendo that this case arose or is charged against this defendant with transactions that allegedly took place in 1969. Part of the problem has to be, and statements do contend that in 1969 and 1968 he was at a certain place at a certain time. For us, your Honor, to go back to determine and find where he was on these dates, if, in fact, he was even in the city, would be something that requires time. Now, I know, your Honor, that the court is doing what it is supposed to do, to try cases, but, your Honor, in this case the defendant is in, the witnesses are in.

Now, I have a personal matter, a personal reason for delay until right after Thanksgiving, but, on the 26th, which is two weeks from today, we would be prepared and at your service to continue with the trial of this case, and, your Honor, we would use the time most beneficially for the defendant in this case.

Like the court has pointed out, we were retained



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last Tuesday or Wednesday, and I have worked diligently, and spent many hours on it, and I just ask that a two-week adjournment is not for the purpose of delay, and it would be approximately 37 days from the day of arrest to the day of trial.

THE COURT: Motion denied.

MR. RUSSO: Your Honor, for the record I would join in the motion of Mr. Bobick, the motion to dismiss the indictment.

THE COURT: Denied.

I want your other motions.

MR. BOBICK: Two of them, your Honor, deal with bills of particulars. One of them, we never received a statement from the government whether or not there are any tape recordings or photographs. We want a copy of the photographs and we want to know whether there are any tapes.

THE COURT: Are there any?

MR. LAVIN: Your Honor, the government has no knowledge of any tapes. We checked with the Department of Justice and we have not received word.

THE COURT: What else do you want?

MR. BOBICK: Well, your Honor, the bills of particulars were rather extensive --

THE COURT: What do you want that the government

MR. VICTOR: All right.

MR. LAVIN: Yes, sir.

(Recess.)

(At 4:40 P.M. a note was received from the jury.)

(In the courtroom in the presence of the jury.)

(The roll was called - all present.)

THE CLERK: Mr. Foreman, has the jury agreed on a verdict on counts 4 and 5 as to defendant Maher?

THE FOREMAN: We have. All of us have found the defendant guilty on counts 4 and 5.

THE COURT: Have you been able to reach a verdict on count 1 or counts 2 and 3?

THE FOREMAN: We have not been able to reach a verdict.

THE COURT: On counts 1, 2 and 3?

THE FOREMAN: 1, 2 and 3.

THE COURT: The Court will excuse the jury and declare a mistrial as to counts 1, 2 and 3 at this time. You have had this case now for over 5 hours and you have been unable to reach agreement; so I will declare a mistrial.

(The jury was discharged and left the courtroom.)

THE COURT: The motions on which the Court reserved, in view of the verdict of no decision, in view of no verdict, I will deny as of this time. So that will close that out.

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THE CLERK: United States of America versus Angelo Trabacchi. Is the Government ready?

MR. GOLD: Government is ready, your Honor.

THE CLERK: Is the defendant ready?

MR. AIDALA: The defendant is ready. I have some applications at the present time.

THE COURT: Go ahead.

MR. AIDALA: Initially, your Honor, I am moving to dismiss the indictment against Mr. Trabacchi on the grounds that the Government has failed to indict him, to prosecute him or to arrest him until October 18th of 1973, when, in fact, from my review of the materials that have been turned over to me since the end of last week, it is indicated that the Government had in its possession for a period of time which may be two and a half or three years before the indictment against Mr. Trabacchi the information upon which the indictment was based.

I feel that their failure to indict him in a timely period so that he could have been aware of the charges, so that he could have an opportunity to adequately prepare a defense was a violation of due process.

There has been nothing that I could find in the record, your Honor, which would indicate that there was a plausible or reasonable explanation for the Government's long

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delay in obtaining the indictment against Mr. Trabacchi.

As a matter of fact, I think what I have seen would indicate that in fact there was, for example, no continuing investigation.

I would think that the Court should, in the very least, make inquiry of the Government as to the reasons for such a lengthy delay in obtaining an indictment against Mr. Trabacchi.

I cannot find any explanation for it. I say that it is inexcusable and that it has caused irreparable harm to Mr. Trabacchi.

THE COURT: What irreparable harm?

MR. AIDALA: Because he is unable to prepare an adequate defense.

THE COURT: Who? Wait; let's get specific here. You have been giving me generalities. How has he been unable to prepare an adequate defense?

MR. AIDALA: I will be as specific as I can.

One other thing, Judge --

THE COURT: Please answer my question.

MR. AIDALA: This Friday last, I was informed for the first time that the Government intends to introduce evidence from two other individuals of four alleged direct narcotic transactions between those two individuals and me.



Trabacchi, which allegedly took place during the summer of 1970. Mr. Trabacchi has just found out about that.

I will give you an example, Judge. During that period of time Mr. Trabacchi had working for him a young man who was working at Manhattan Beer from, I think, in 1970 to 1973. That young man, whom we could fully have expected to be a witness at the trial and a witness to rebut the Government's testimony, unfortunately died in 1973.

THE COURT: What was his name?

MR. AIDALA: Anthony Santana. I believe the correct spelling of his name is S-a-n-t-a-n-a.

Had Mr. Trabacchi been indicted at a time which was relatively close to the time that the Government had the information upon which the indictment was based, I think that we would have been able, or Mr. Trabacchi would have had a live witness to testify in his behalf to rebut the allegations of the Government's witnesses.

Because of the Government's delay, he has been denied that.

THE COURT: Motion denied. What is the next motion?

MR. AIDALA: My next application, your Honor, is for an adjournment.

THE COURT: Motion denied. Next motion.

You put that on the record before me in my chambers.

Let's not repeat.

MR. AIDALA: Well --

THE COURT: You have put it on the record in extenso in my chambers. Let's not repeat. Let's get moving.

MR. AIDALA: Well, Judge, the next application I have is, if the Government has a transcript that Mr. Trabacchi be provided free of charge with a transcript of the proceedings in court.

THE COURT: Why?

MR. AIDALA: To assist him in the case.

THE COURT: You are privately retained, aren't you?

MR. AIDALA: I think I should set the Court straight on that so it is not confusing.

Your Honor knows that another attorney represented Mr. Trabacchi. Because of an apparent conflict, the other attorney was informed he could not continue to represent Mr. Trabacchi.

I have been led to understand that the Court then exerted whatever pressure it could on that attorney to obtain another attorney.

THE COURT: I did not exert any pressure on that attorney.

MR. AIDALA: It is my understanding that that attorney made conscientious efforts to obtain another attorney.



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The difficulty was the fact that Mr. Trabacchi was in possession of sufficient funds for an attorney to come in and try the case. The gentleman, the other attorney whom I am referring to, appealed to, I suppose, our friendship, as we went to law school together. As I was engaged in trial last week, he asked me to do him a favor.

If Mr. Trabacchi alone had come to me and indicated his financial status to me, I would not have accepted the case.

THE COURT: You mean that the lawyer that was before me two and a half weeks ago was going to try this case for nothing?

MR. AIDALA: That may very well be.

THE COURT: I am asking you: is it true or not true?

MR. AIDALA: I don't know. I will tell, you, Judge, that --

THE COURT: Application denied. Next?

MR. AIDALA: Then, Judge, I would ask for an opportunity, your Honor, to examine any of the narcotics that was allegedly seized which allegedly in some way the Government would contend was related to Mr. Trabacchi, whether they are going to introduce it directly or whether there will be testimony that would refer to that narcotics.

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THE COURT: Mr. Gold?

MR. GOLD: Your Honor, that will have nothing whatever to do with the Government's proof.

MR. AIDALA: No testimony at all about any seized narcotics?

MR. GOLD: That is right.

THE COURT: That's what he says.

MR. AIDALA: At this time, your Honor, I respectfully except to your Honor's rulings, especially not granting us an adjournment.

THE COURT: Let's get something straight, Mr. Aidala. We cannot waste time. You were in my chambers supposedly for a five-minute conference on Thursday, I think it was. It lasted for forty-five minutes, and the record would show that you made an extensive argument for an adjournment at that time. Now, why waste time by going over it a second time?

MR. AIDALA: I have since that time received various materials from Mr. Gold, voluminous pages of testimony of witnesses in other trials. I have done my utmost, Judge, to try and read all of those. I have not been successful. There is only so much a man can do in a short time.

I would ask for a short adjournment --

THE COURT: We have been through this. I have given



you a two-week adjournment in this case.

MR. AIDALA: That was before Mr. Trabacchi was informed that he was going to be accused of something --

THE COURT: He had two weeks' notification of that, according to his attorneys.

MR. AIDALA: Not of the fact --

THE COURT: Let's get on. You have a Wade proceeding here that you want to proceed with?

MR. AIDALA: Yes.

MR. GOLD: My first witness will be Police Officer William Brady, who is in the witness room.

W I L L I A M     E .     B R A D Y , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOLD:

Q     Officer Brady, will you tell us how you are employed, sir?

A     I am a police officer with the New York City Police Department, assigned to the Department of Justice Drug Enforcement Task Force.

Q     Did you have occasion to be present in the U. S. Attorney's office on July 18, 1974?

A     Yes.

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Page 1

United States of America

v.

Enrico Trabacchi

CLERK 229  
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RECEIVED COURT REPORTERS  
73 Cr. 970  
Room 613 FOR FILING

October 10, 1974  
10:00 a.m.

(Trial resumed.)

(In open court.)

THE COURT: Mr. Gold, I understand you want to  
put something on the record.

MR. GOLD: Yes, thank you, your Honor.

I wanted to take up the matter that we took up  
initially in chambers last week, and that pertains to a  
tape from the Patrick de Simone case in New Jersey.

Last week, in chambers, I told you that that tape  
had been delivered to me sealed and that I was going to make  
an effort to hear it, and early this week your Honor ruled  
that the materials I turned over to your Honor for in camera  
inspection, at least at this juncture, did not constitute  
Brady material or Brady material, and I have been thinking  
about that for the last few days, and I haven't changed my  
position at all, but I am concerned about having this trial

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forward with all possible dispatch.

Accordingly, I would like to modify the position  
with your Honor and I have made arrangements this  
morning to play that tape for Mr. Aidala, because I don't  
want to put your Honor in a position in case we have a  
dispute of having to hear a three-hour tape.

THE COURT: It is a little late for that.

MR. GOLD: Yes, but I want to correct the situa-  
tion. I have suggested to Mr. Aidala that we meet later  
today and play the tape and if there is a dispute, we can  
come back to you.

THE COURT: All right.

MR. GOLD: In addition, for the same reasons, I  
am going to turn over to Mr. Aidala this morning a pile of  
so-called 3500 material that relates to the Sisca case and  
the de Simone case.

I don't want this trial held up while we dispute  
what is relevant or irrelevant. I will turn over the grand  
jury minutes at this point. I don't think they are rele-  
vant. I just think it would insure that this trial --

THE COURT: What grand jury minutes are you refer-  
ring to?

MR. GOLD: Mr. DePasquale has testified in grand  
juries in the Sisca case in this court and in the Cappucelli

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1 mp:mg 3

2 case in the District Court in New Jersey on the general  
3 subject of his narcotics dealings, though at times not re-  
4 lated to this case.

5 Indeed, none of the testimony relates to individ-  
6 uals in this case other than Mr. Antonelli. But if it becomes  
7 relevant, the materials will be in Mr. Aidala's possession  
8 and there won't be any need for a delay.

9 THE COURT: All right. Put on the record what  
10 you are turning over by number.

11 I gather the material you have just referred to is  
12 the material that is presently sealed, in what, Exhibit 1?

13 MR. GOLD: No, your Honor. That is not correct.  
14 The material in Court Exhibit 1 was -- well, consists of  
15 various documents, but I don't believe that that includes  
16 the grand jury minutes.

17 My recollection is that it had some notes that  
18 were made by Mr. Gregory, the prosecutor in that case.  
19 It had some notes--

20 THE COURT: There also is some testimony there.

21 MR. GOLD: But that is not a complete set, I  
22 believe. I have done some checking in the last two nights  
23 and I now understand that Mr. DePasquale testified in that  
24 case twice.

25 I am turning over both sets of minutes.



want to call it,

Q They made you a promise that they wouldn't charge you with any crimes, is that correct?

A Nobody promised me anything.

Q You weren't charged with any crime as a result of the incident of the 23rd, were you?

A Well, I don't know. They didn't put me in jail. But they didn't promise me anything.

Q When you testified in the grand jury who were you testifying against?

A I was testifying against them over there.

Q Bobby Maher?

A Yes.

Q How about your husband?

A Well, I don't know.

Q You were testifying against him too, weren't you?

A Well, I guess so.

Q And Quinones, you were testifying against him too, weren't you?

A He was supposed to testify too, but he got killed.

Q But you were supposed to testify against him, is that correct?

A Yes, I guess so.

THE PROSECUTOR: Your Honor, I move to strike that

remark from the record. It is unresponsive.

THE COURT: Yes, strike it out.

Q Shortly after you walked out of the grand jury

room on the 26th of March, 1971, you were arrested on another charge?

A Yes, I was.

Q And you were charged with possession of drugs?

A Yes.

Q And possession of an imitation pistol?

A Yes.

Q And possession of works, is that correct?

A Yes.

Q Some time later you received probation on that charge, is that correct?

A No, I didn't get a chance to get it.

Q Did you ever appear in court on that charge?

A Yes.

Q What happened with that charge?

A Well, after I got out on bail I went to court.

Q What happened with the charge?

A I don't know.

Q Did you have a lawyer?

A Yes.

Q What was his name?



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Olivero-gross

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A Mr. Udall.

Q. Now, Olivero, when did you first start talking with the government agents about this case, the one you are testifying in right now?

A Right after we got arrested on Gunhill Road.

Q And you have been talking about the agents and the U.S. Attorneys in this case ever since then?

A Yes.

Q Are you saying you have been talking about them for nearly two years about this?

A Yes. Well, what can I tell you? They have been talking to me and I have been talking to them. I have been in jail, though, you know.

Q Approximately how many times would you say you spoke with government agents in connection with this case?

A Well, I talked to Mr. Hershey and Rainey. Then I went to Puerto Rico to get my time. Then I was in West Virginia. And last November Detective Bill Brady and the other one, I can't think of his name, they called for me again and asked me about the case.

Q Did they call for you down in West Virginia?

A Yes.

Q While you were in jail?

A Yes.

A He said he will be back in a little while with it.

Q And did you and Mr. Antonelli leave at that time?

A Yes.

Q And did there come a time later that day when

you and Mr. Antonelli returned to Manhattan Beer Distributors?

A Yes, we did.

Q Will you tell us what happened at that time?

A We went-- we left the beer distributor and we went to 118th Street and Pleasant Avenue where Mr. Antonelli was holding some heroin on the side. He took the package, weighed four ounces, put it in his waistband, and we walked back to the beer distributor and handed the package to Angelo, and Angelo handed Ray some money, and then Angelo put the package in a coke machine, a broken coke bottle machine.

Q Was there any conversation at that time that you recall?

A Again he said he would be in touch.

MR. AIDALA: At this time I am going to ask to approach the bench.

THE COURT: All right.

(At the side bar.)

THE COURT: Yes?

MR. AIDALA: Your Honor, the testimony has been of purchases allegedly made by Mr. Trabacchi from this



perjury, things of that kind.

THE COURT: Well, do that.

MR. AIDALA: To go into that I will first have to read --

THE COURT: Nothing in there is going to help you.

MR. AIDALA: Well, I don't know, Judge.

THE COURT: Well, you can hold it off. This isn't for this witness.

MR. AIDALA: Yes, it is, Judge.

MR. GOLD: May I say one thing? Pursuant to your Honor's direction, I reproduced all of the testimony in this case where this man was cross-examined for a day. To claim he can't go forward with the cross-examination is utterly ridiculous.

THE COURT: What are you worrying about?

I have directed him to proceed.

I will give you a little extra time at lunch.

Start to cross-examine now.

(In open court.)

#### CROSS-EXAMINATION

BY MR. AIDALA:

Q Mr. DePasquale, we met yesterday for the first time in court, is that correct?

A I think it was the day before yesterday.

MR. AIDALA: I think it is necessary, if I am to know where I am going.

THE COURT: We discussed this before the jury came in.

You are excused until 2:30.

(Jury left the courtroom.)

THE COURT: Now, this 3500 material given to you on the off-chance, according to the United States Attorney, that it may contain some information regarding what the witness has testified to--- that's the 3500.

You can read that material.

MR. AIDALA: As to the tape, your Honor, I intend to cross-examine the witness concerning conversations that he held with either agents or the District Attorneys or U. S. Attorneys, and I will be glad to make my offer of proof as to that because, your Honor, I intend to show by way of cross-examination that these witnesses, who were defendants at the time, made the most strenuous efforts on their part to name every single individual that they could think of whom they had any alleged narcotic dealings with, that on a number of occasions they went so far not only as to name people they knew or they had dealt with, but there may be a possibility that they fabricated names.

THE COURT: Are you going to get all this from



2 the tapes?

3 MR. AIDALA: That is what I hope I will be able  
4 to bet, but I can't unless I listen to them, Judge, and-

5 THE COURT: Are you going to listen to them?

6 MR. GOLD: Your Honor, the tape was made only  
7 in connection with the Cappucelli case. Thirteen defend-  
8 ants pleaded guilty in that case.

9 MR. AIDALA: What has that got to do with the  
10 case.

11 MR. GOLD: It has nothing to do with the case.

12 THE COURT: You are saying they dreamt these names  
13 up and he is saying they did not. Thirteen fellows pleaded  
14 guilty.

15 MR. AIDALA: The tape I thought they were talk-  
16 ing about was a tape that was taken when they were ini-  
17 tially questioned in the District Attorney's Office in New  
18 York County, and that is the tape I thought -- isn't there  
19 such a tape in existence?

20 THE COURT: Isn't the tape the one he was talk-  
21 ing to you at ten o'clock this morning in front of me?

22 MR. AIDALA: I ask now, Judge, whether such a  
23 tape exists and I renew my application to be permitted to  
24 hear that tape. That I think is probably more valuable  
25 toward my line of defense than probably the second one,

because this is the original--

MR. GOLD: Your Honor, the transcript of that tape was turned over to both attorneys and to Mr. Aidala.

Your Honor has read it. It pertained only to the Sisca case. Your Honor has ruled it is not 3500 and it is not Brady.

Over and above that, pursuant to your Honor's direction, we have produced in its entirety all of the testimony in the Sica case.

MR. AIDALA: We aren't talking about the Sisca case, Judge.

May I ask whether I got this transcript? I am unaware of this.

MR. GOLD: It is five pages long. You have it.

MR. AIDALA: Is Mr. Gold representing that those five pages of the transcript contain the entire conversations between Mr. Antonelli and Mr. DePasquale and any District Attorney?

How many tapes are there?

MR. GOLD: I don't know.

MR. AIDALA: Obviously, Judge, if he doesn't know, how can he make a representation to this Court as to what is contained in those tapes? He has the obligation to have listened to all of them.



THE COURT: He doesn't have an obligation to listen to all of the tapes in the state court action.

MR. AIDALA: You are saying he does not? Certainly if there is Brady material contained in them, he would have an obligation to turn it over to us.

THE COURT: Only anything that he has been made aware of.

MR. GOLD: I have leaned over backwards to supply Mr. Aidala with everything.

THE COURT: He is referring to some interviews with the District Attorney of New York County.

MR. AIDALA: Assistant District Attorney of New York County, any police officers who may have been present at that time.

THE COURT: When there are such tapes.

Were there such tapes, Mr. Gold?

MR. GOLD: Yes, your Honor, there were.

THE COURT: And are there transcripts of those tapes?

MR. GOLD: The only transcript I am aware of is the 3525.

THE COURT: Is that a complete transcript of the tapes? Is that a complete transcript of the tape?

MR. GOLD: I can't make a representation.

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DePasquale-cross

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THE COURT: Well, find out over lunch time.

In the meantime, go through the stuff you have

got.

(Luncheon recess.)



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AFTERNOON SESSION

2:30 P.M.

(In the courtroom in the presence of the jury.)

ANDREW D e P A S Q U A L E, resumed.

MR. AIDALA: May we approach the side bar, your Honor?

THE COURT: Yes.

(At the side bar.)

MR. AIDALA: This witness testified that at the time of the alleged transactions, oh, at least, the first one, there was a fellow by the name of Riccio who worked --

THE COURT: Fat somebody.

MR. AIDALA: There was a fellow by the name of Fat Anthony Riccio, right, who he claimed was working in the Manhattan Beer at the time.

THE COURT: Right.

MR. AIDALA: I am requesting of the government whether they have any exculpatory or Brady type of information concerning Riccio and his whereabouts in 1970 during the time when this witness testified that that man, Mr. Riccio, was allegedly in Manhattan Beer.

MR. GOLD: I have a subpoena out for Mr. Riccio.

slh2

I am hoping we can pick him up.

THE COURT: Very well.

MR. AIDALA: Now, we were discussing before the recess, Judge, the situation about the tapes, and I believe we had left off with your Honor making an inquiry as to Mr. Gold finding out what the true situation was as to those tapes.

THE COURT: What did you find?

MR. GOLD: Your Honor, Officer Brady and I called Mr. Rogers' office over the lunch break -- and this is important -- and I have that particular tape in court right now, which was just delivered to me. It was listened to in its entirety by Special Agent Dennis Nargy of the DEA, who was the agent in charge of the Sisca case, and he tells me there does exist a transcript of that entire tape, but that the only thing he has now in his possession is what I have already turned over.

So I will undertake to do this: I will listen to that tape. I don't yet have permission to have that available to Mr. Aidala for fear that other cases may be compromised.

Mr. Nargy will state to you under oath, if necessary, that there is nothing on that tape that pertains to Mr. Trabacchi or anything that would be relevant to



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this case, but I don't expect--

THE COURT: I will have to be the one to listen to the tape. His testimony would not help.

MR. AIDALA: May I just get a piece of paper from my desk, Judge, relative to this?

THE COURT: Yes, go ahead.

MR. AIDALA: Your Honor, first of all, I would like to know whether there is only one or more than one actual reels of tape.

MR. GOLD: I can open the binder right now and tell you: I don't know.

THE COURT: Haven't you looked at it yet?

MR. GOLD: No, it was just delivered to me sealed from Mr. Rogers' office.

THE COURT: Take a look.

MR. GOLD: You want me to take a look now?

THE COURT: Yes.

MR. GOLD: It is in a locksealed enveloped. It says two tapes (handing).

THE COURT: Two tapes. That is obviously more than appears on the seven pages of transcript.

MR. GOLD: Clearly, Judge.

THE COURT: That is number 1. Now what is the next one?

MR. AIDALA: Judge, the gist of my cross examination of this witness will really be involved with not the transactions that he testified to but his initial cooperation with the police, which I think is at the time period covered by the tapes in question.

THE COURT: Well?

MR. AIDALA: In order to be able to effectively cross-examine him I would have to listen to the tapes to determine, for example, what promises had been made to him by any law enforcement agent or DA, or whether he was told he would be granted bail, whether he was told he would get out on the street, or whether he was told whether he would be given immunity from other charges, things of that nature.

THE COURT: I can look for that.

If they say this will compromise other prosecutions, you can't listen to them.

MR. AIDALA: I don't think that is their allegation at all.

THE COURT: Yes, it is.

MR. GOLD: I said it may.

THE COURT: It is my function to listen first to see if you should listen to them.

MR. GOLD: I want to be very frank with your



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Honor. When I made that representation this morning to your Honor what I was trying to do was conserve your Honor's time, and I realize that you ultimately have to make the decision as to whether or not they should be turned over, but I was a little uncomfortable, having made the representation to your Honor based on other people in the Department of Justice who are more familiar with these tapes than I am, had told me. I wanted to be able to give my assurance as prosecutor in charge of this case that I had listened to them in order to make sure that the representation being made to you was correct.

THE COURT: Do you know what he is looking for?

MR. GOLD: He is looking for?

THE COURT: Yes. He is looking for not whether these tapes contain any testimony by the witness regarding this trial. He is trying to find out whether this man was promised anything in return for his cooperation as reflected on these tapes. I can listen to them very easily and find out.

MR. AIDALA: That is one thing your Honor.

And I also on the question would like to see whether this witness, for example, together with his partner -- Judge, could the witness step down? I think he might hear.

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2 THE COURT: Not if you keep your voice down.

3 MR. AIDALA: I am trying to establish whether this  
4 witness and his partner together fabricated stories --5 THE COURT: No, that is going too far afield.  
6 That is not the purpose of 3500 material.

7 MR. AIDALA: To determine credibility, Judge.

8 THE COURT: I am very sorry, you are not entitled  
9 to every word that a witness has said to anybody under  
0 3500. You are only entitled to those statements which deal  
1 with what he testified about. That is all you are entitled  
to under 3500.MR. AIDALA: Another avenue of approach that I  
would like to take, for example, Judge, is that if, let  
us assume, the District Attorney or the police officers  
stated: "Tell us about everyone whom you can remember  
to whom you sold narcotics," and let us assume that they  
named 20 or 30 or 40 people, and they did not name Mr.  
Trabacchi, I think I would have a right--THE COURT: In the material that you gave me  
which is sealed in the court exhibit that question was  
never put yet.

MR. AIDALA: Judge--

THE COURT: I am going to determine it. You  
are not going to listen to it.



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MR. AIDALA: If your Honor will determine whether they were asked that type of question in any way, shape or form, whether they named a lot of people and did not name Mr. Trabacchi--

THE COURT: Depending on what the question is, because I am not going through what I went through in some other trials.

MR. AIDALA: So I could possibly argue if they could not remember his name back then, that they did not remember it now and that it is a fabrication--

THE COURT: Stop talking so much and get down to cross-examining the witness and finish up with him.

MR. AIDALA: My cross-examination --

THE COURT: It should be just a few questions if properly put, not like 45 minutes this morning and going back on each individual time he was brought here, who he talked to, and who was present. Now you didn't have to spend 45 minutes to bring that out.

MR. AIDALA: I object to your Honor stating that loud enough so the jury can hear it.

THE COURT: Go back and finish your cross-examination.

(End of side bar discussion.)

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THE COURT: The witness is excused, subject to recall tomorrow -- unless you have any redirect examination, Mr. Gold.

MR. GOLD: None, your Honor. I will call my next witness.

THE COURT: You are excused, subject to recall tomorrow.

(Witness excused.)

MR. AIDALA: May I have a brief recess, your Honor?

THE COURT: No.

MR. GOLD: Your Honor, my witness is on telephone notice in my office, and it will take two minutes to get him here.

THE COURT: He is not sitting in the witness room?

MR. GOLD: No; he is in my office with the marshals.

THE COURT: All right. We will have a short recess.

(The jury left the courtroom.)

THE COURT: Get me a machine so I can listen to this tape.

MR. GOLD: I already have one, your Honor.

THE COURT: Where is it?

MR. GOLD: In my office.

THE COURT: Bring it up to chambers.



(In the courtroom in the absence of the jury.)

THE COURT: All right, call the case on trial.

MR. AIDALA: Your Honor --

THE COURT: Yes, Mr. Aidala?

MR. AIDALA: Your Honor, before the jury comes in, I will move at this time to strike the testimony of both DePasquale and Antonelli on the grounds that, number 1, Mr. Trabacchi is not charged with crimes on the alleged times so testified.

Number 2, Mr. Trabacchi is not charged together with DePasquale and Antonelli as being co-conspirators, and I do not see, and it is my claim that there is, therefore, no valid basis on the law to have that testimony admitted into evidence.

There has been no connection, of course, with those alleged transactions, your Honor, and any of the alleged co-conspirators named in the indictment.

THE COURT: The motion is denied.

What about the tape reading that you did, Mr. Gold?

MR. GOLD: Your Honor, last night Officer Brady and I listened totwo of the three tapes we have, and it turns out that I believe the two reels that your Honor listened to were the same reels that I listened to.

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I don't believe there is anything pertinent in them at this point.

Mr. Aidala did not listen to them with me, and that leaves me only the New Jersey tape, and my position on that has been clear from the outset, that Mr. Aidala can listen to that at any time he sees fit.

THE COURT: Where were you last night, Mr. Aidala?

MR. AIDALA: Excuse me, your Honor, I want to correct something.

I was told last night that Mr. Gold was going to listen to the New Jersey tapes and that your Honor was the only individual who was in possession of the alleged tapes of Mr. Miller.

MR. GOLD: That is correct.

MR. AIDALA: I will state to your Honor that Mr. Gold told me that, yes, I would have an opportunity to listen to the New Jersey tapes if I wished to listen to them, not to the tapes your Honor is listening to.

MR. GOLD: That is correct.

MR. AIDALA: I, your Honor, had to make a choice last night as to what to do with my time, what I felt would be most advantageous to the defendant.

I did not listen to the New Jersey tape.

I do rely on Mr. Gold, as an officer of the court



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2 and as an Assistant U.S. Attorney to inform me whether  
3 there is anything in those tapes touching on the subject  
4 matter that I questioned the witnesses about on cross-  
5 examination, and that I represented to the court at the  
6 side bar I was interested in.

7 I will rely on the fact that --

8 THE COURT: I gather you did not listen to that  
9 tape?

10 MR. GOLD: The New Jersey tape is a cassette,  
11 and it would not fit into our machine, and we are making  
12 arrangements to have another machine furnished.

13 THE COURT: I listened to the Miller conversation  
14 of November - whenever it was - November 21, 1972, and  
15 the one with the inspectors, which was December 6, 1972,  
16 and there is absolutely nothing inconsistent on these tapes  
17 with what the witness testified to.

18 MR. AIDALA: May I ask your Honor whether there  
19 were, for example, promises made either directly --

20 THE COURT: Absolutely none. I said nothing  
21 inconsistent with what he testified to. You took him over  
22 promises line by line, and everything he told you is exactly  
23 as is on those tapes.

24 MR. AIDALA: Well, if that is so, your Honor--

25 THE COURT: He was told he could not get on

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2 the street no how.

3 MR. AIDALA: I assume, then, that the court would  
4 have no objection to my listening to it?

5 THE COURT: Absolutely I have an objection.  
6 It is none of your business what is on that tape. I  
7 listened to them pursuant to the law, and I am putting  
8 on the record that there is absolutely nothing inconsistent  
9 with what the witness testified to, which is the only purpose  
10 of 3500 material.

11 MR. AIDALA: There were other purposes that I  
12 stated to the court as to why I thought the tapes were  
13 necessary.

14 THE COURT: What other purposes?

15 MR. AIDALA: For example, your Honor, the pressure  
16 that was upon the witnesses to come up with some information.

17 THE COURT: He said to you there was no pressure  
18 put on him, and I said there is nothing inconsistent with  
19 his testimony.

20 MR. AIDALA: But I submit that that is a question  
21 for the jury to determine whether there was.

22 THE COURT: No, it is not, I am sorry. He  
23 testified from the stand. Now the jury can believe him or  
24 not. This material is 3500 material to indicate that he  
25 did not tell the truth on the stand, and I am telling you



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what he said from the witness stand is consistent with what is on the tapes.

MR. AIDALA: I ask for it, your Honor, under the terms of Brady, your Honor.

THE COURT: It is not within Brady.

MR. AIDALA: I feel it would be extremely helpful to the defendant.

THE COURT: Of course every defendant wants everything he can lay his hands on, but you are only entitled to what the law says you may have.

MR. AIDALA: There are other reasons, your Honor.

THE COURT: What?

MR. AIDALA: I want to establish the amount of people who were named by the witnesses to show that they were trying --

THE COURT: I will go on the record and say that his estimate of 15 is about right.

MR. AIDALA: Could it have been twice that much?

THE COURT: Don't ask me any questions. I said his estimate of about 15 is right.

MR. AIDALA: May I respectfully -- your Honor used the word "estimate." What leeway does your Honor give-

THE COURT: I will not give you any leeway.

MR. AIDALA: I would also like to use the tape to

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determine the extent of naming, for example, the streets upon which any claim was made of any alleged transactions.

THE COURT: Nothing inconsistent with what he has said, what the testimony was on direct or on cross examination.

MR. AIDALA: What I am attempting to do, your Honor --

THE COURT: What I am telling you is, I have ruled, and I will seal the tape in case an appellate court has to look at it. You have absolutely no right to listen to the tape. It has nothing to do with the case.

MR. AIDALA: Of course I understand you, and I disagree, otherwise I would not be asking to listen--

THE COURT: You ought to learn the law and stop arguing with me because you know I am quoting the law correctly.

MR. AIDALA: I simply want to state my basis for what I feel is the need, Judge, that is all. I want to show that these individuals -- let's say the second tape, your Honor, which you mentioned of December 6th of 1972, there was apparently another one which was not brought out yesterday --

THE COURT: I think that is the same one he referred

to.



MR. AIDALA: Judge, I would like to see it after that time interval --

THE COURT: Why don't you stop arguing? I have ruled three times. You put on the record yesterday that at the side bar what you wanted. I have listened to those tapes in conjunction with your requests, spent several hours until late last night doing it, and I have now told you what they contain insofar as your requests are concerned, and that ends it, and let us get on with the trial.

MR. AIDALA: I respectfully except.

THE COURT: Your record is clear, you made it clear yesterday at the side bar what you wanted.

MR. AIDALA: Now, your Honor, there was testimony yesterday concerning Ronny Riccio who was allegedly present at the alleged scene of the criminal activity which was testified to.

If your Honor recalls a while back, some days ago -- it couldn't have been that long ago since we only started a few days ago -- I made the request of the government, and I believe it may have been up in your Honor's chambers, as to the names of any individuals, who they were, who were present at the scene of the time of the alleged crime.

The reason for that is obvious, Judge. I think if we had an opportunity to have that information and

interview a person and he indicated he was not there, that would be, without question, Brady material.

Now, that was denied.

Again, yesterday I inquired again at the side bar concerning Mr. Riccio.

I again press and I ask Mr. Gold to state whether he or any other U.S. Attorney, for example, Mr. Batchelder, Mr. Lavin or any case agents have ever interviewed Mr. Riccio, and whether Mr. Riccio, your Honor, has ever testified, or whether they know the whereabouts of Mr. Riccio, and if Mr. Gold does not know that --

THE COURT: He told you yesterday he had a warrant out for his arrest.

MR. GOLD: A subpoena.

THE COURT: He told you that yesterday.

MR. AIDALA: But your Honor is jumping to a conclusion.

I asked whether Mr. Riccio has ever been interviewed, and if Mr. Gold does not know about that, I would ask that the court instruct him to inquire of any other U.S. Attorneys or case agents such as Buchalter, Lavin, Brady, as to whether they have interviewed Mr. Riccio, and if that is true, certainly I would like to see what Mr. Riccio said concerning his whereabouts at the time



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testified to during the summer of 1970 allegedly by the witnesses.

THE COURT: Mr. Gold?

MR. GOLD: Your Honor, I would be delighted to be accommodating. I am hopeful that Mr. Riccio will be picked up.

It is not a warrant for his arrest; we have a subpoena out for him to testify.

My understanding is he was interviewed. I would be delighted to give Mr. Aidala his address and maybe he will be a little bit more successful. I certainly hope so. When Mr. Brady comes in I will give him the address. His phone, as I understand it, was disconnected approximately five days ago when we tried to reach him. I hope one of us is successful.

MR. AIDALA: I would like --

MR. GOLD: As soon as Mr. Brady gets back you will have everything that I have.

THE COURT: He says he wants any interviews you may have had with Mr. Riccio.

MR. GOLD: I don't know that there are any notes of those interviews. My understanding is that he answered a grand jury subpoena, and I do not know that there are notes of any conversation that occurred in the U.S. Attorney

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office.

MR. AIDALA: May I ask if Mr. Gold has spoken to Mr. Buchalter or Mr. Lavin in an attempt to determine from them what knowledge they have concerning Mr. Riccio, since their names have been mentioned by the witnesses who testified here.

MR. GOLD: I have spoken only to my case agent, Mr. Brady, who informs me that at the time Mr. Riccio came in, I believe Mr. Batchelder may have been in the office. Mr. Lavin certainly was not.

MR. AIDALA: Apparently Mr. Gold relies on everything Mr. Brady told him.

THE COURT: He has to rely on someone. He is the case agent. He is not supposed to go out and run around and ask everybody who had anything to do with the case. Mr. Brady is the man in charge of the case. I assume he is the man who knows all the things that have to be told. Everybody else only knows pieces.

MR. AIDALA: I am talking about a fellow colleague of Mr. Gold, Mr. Batchelder.

THE COURT: I don't think the burden has to be put on the Assistant to run around the office speaking to anybody who may have been identified with the case. The case agent is the man who was in charge of the case

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and knows everything that goes on.

MR. AIDALA: Your Honor, I wonder if there is some way that I could be aware of the schedule of the court.

THE COURT: I am going to sit until about 4:30, a quarter to 5 today. We will not sit Monday because it is a holiday. We will continue on Tuesday.

MR. AIDALA: Is there some way that I could be aware of how much more the government in its case?

THE COURT: How much longer will you be on the direct of Antonelli?

MR. GOLD: I would say ten minutes.

THE COURT: How long will your cross be?

MR. AIDALA: I will cross-examine extensively, your Honor.

THE COURT: Well, please do, and get down to the point, not the way you did it yesterday, starting at the most recent interview, going all the way back to July, and one time is enough. He even had to correct you as to the number of times he saw Batchelder, after he told you once 6, you kept using the figure 3 --

MR. AIDALA: Judge, what I am trying to do, obviously, is to test his credibility and test a witness' recall as to such things--

THE COURT: But those things go up and down,

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up and down, up and down, repetitive, repetitive, and hour later, an hour and a half later the same question is being asked, and yesterday you insisted on continuing with your cross-examination when I said put the next witness on the stand. You had nothing more you wanted to cross-examine on at that point. In the first place, you kept asking something you asked an hour and a half before. You just didn't want to have that witness end yesterday.

MR. AIDALA: No, Judge, I wanted an opportunity--

THE COURT: You put on the record that all you had to do was the tapes, and you were through with the witness, and I said fine, we will excuse the witness until tomorrow morning and I will listen to the tapes, and you said "Oh, no, I have got more cross-examination." You didn't have any more cross-examination at that point except the tapes, or else you wouldn't have made the statement on the record which you did.



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MR. AIDALA: Judge, I must state to the Court that your Honor has cut me off at certain points, not letting me recross the witness.

THE COURT: You are only entitled to recross on something new brought out on redirect.

MR. AIDALA: I want to make certain, Judge, that I do ask all the questions that should be asked. I hope the Court understands this--

THE COURT: Mr. Aidala, yesterday, the record will show, that I asked you and you made the statement that you were through with the witness except for the tapes and material that may be related to the tapes, and I said, all right, I will listen to the tapes.

In the meantime we will excuse this witness and put the next witness on the stand, at which point you threw your hands up, "Oh, no, no, I have got more cross-examination."

You started fumbling with your papers. You didn't have any more cross-examination at that point because the first question you put to the witness was the same one you put to him an hour and a half before. You were fumbling with your papers and dragging your heels all afternoon.

Now, bring the jury in and let's get going.

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- against-

73CR970

ANGELO TRABACCHI, et al.,

Defendants.

-X

S i r s:

PLEASE TAKE NOTICE that upon the annexed affidavit of EDWARD BOBICK, duly sworn to on the 8th day of November, 1973, and all the papers and proceedings heretofore had herein, the undersigned will move this Court in Room 501, United States Courthouse, Foley Square, New York, New York, on the 12th day of November, 1973, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order dismissing the indictment herein on the grounds that the defendant was denied his right to due process of law and to a speedy trial as set forth in the Constitution of the United States in that the period of time between the date of the alleged acts contained in the indictment and the time of the defendant's arrest is unduly long and constitutes a violation of the aforesaid provisions of the United States Constitution, and for such other and further and different relief as to this Court may seem just and proper.

Dated: New York, New York

November 8, 1973

BOBICK, DEUTSCH & SCHLESSER  
Attorneys for defendant,  
ANGELO TRABACCHI  
Office and P.O. Address  
149 West 72nd Street  
New York, New York 10023

TO: HON. PAUL CURRAN  
United States Attorney for  
Southern District of New York,  
Federal Courthouse  
Foley Square  
New York, New York

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UNITED STATES OF AMERICA

- against -

ANGELO TRABACCHI, et al.,

Defendants.

-X

State of New York     )  
County of New York    ) SS.:

EDWARD BOBICK, being duly sworn, deposes

and says:

That I am an attorney at law, duly admitted to practice in the United States District Court for the Southern District of New York, a partner in the law firm of BOBICK, DEUTSCH & SCHLESSER attorneys for the defendant, ANGELO TRABACCHI, and make this affidavit in support of the within motion to dismiss the indictment herein.

That the defendant was indicted by a United States Grand Jury for the Southern District of New York on/ or about October, 1973. The indictment charges in substance one count of conspiracy involving the defendant, ANGELO TRABACCHI and others and four substantive counts involving violations of the statutes of the United States pertaining to crimes relating to the sale and distribution of drugs. Three of the five counts of the indictment relate to the defendant, ANGELO TRABACCHI. Of particular significance it must be noted that as to Count I of the indictment, it is alleged that the conspiracy commenced on January 1, 1968, the overt acts charge therein related to dates in 1968, 1969 and 1971. Although the indictment charges a continuing conspiracy to January 1971, last overt act charged in the indictment refers to November 2, 1971.

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Insofar as the substantive counts are

concerned, those relating to the defendant, ANGELO TRABACCHI charge crimes allegedly occurring in October of 1969 and November 1969. It must be noted that the defendant, ANGELO TRABACCHI, was not arrested until October 18, 1973.

It is respectfully submitted that this undue delay is a hardship which the defendant cannot overcome and this delay was occasioned merely by the apathy, negligence and nonchalance of the government in the prosecution of this case.

The defendant has been living at O'Shaughnessy Lane, Closter, New Jersey, for several years. Accordingly he has been available for the service of process, if indeed the government had sought to execute the same. The defendant has not been hiding nor in any other way attempted to secrete himself. There seems to be no apparent reason for the government's failure to prosecute this matter diligently. Since the lapse of time has been so great since the acts charged in the indictment, it would be difficult if not impossible for the defendant to determine precisely where he was at the times charged in the indictment. It must be further emphasized that the defendant, unlike an attorney, judge, prosecutor or physician, does not keep a daily appointment record or diary. While the above listed professions require an orderly and systematic daily record of activities, the average person does not lead an organized life. The difficulties in establishing whereabouts become even more apparent when viewed in a realistic manner.

The government should not now, after such a long passage of time, be permitted to come forth with allegations that the defendant was involved with illegal transactions concerning drugs at a time when the defendant, without great difficulty, establish his whereabouts and present witnesses with regard thereto.

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Upon information and belief, it is noted that the co-conspirators alleged in the indictment are deceased and accordingly the delay by the government in prosecuting this matter has therefore effected any evidence which might be offered. Further, the government does not set forth any apparent reason for the unreasonable delay in this matter.

In light of the decisions as set forth in Ross v. U.S., 249, F 2d, 210; Woodey v. U.S., 370 F 2d 214; U.S. v. Nepue, 401 F 2d 107; Jones v. U.S. 402 F 2d. 639; the within motion should be granted.

WHEREFORE, it is respectfully requested that the motion be granted in all respects and that the indictment herein be dismissed.

*Edward Bobick*

EDWARD BOBICK

Sworn to before me this

8th day of November, 1973

*Steven H. Rochkind*  
STEVEN H. ROCHKIND  
Notary Public, State of New York  
No. 24-3315895  
Qualified in Kings County  
Certificate filed in N.Y. County  
Commission Expires March 30, 1975

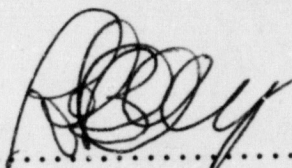
STATE OF NEW YORK )  
: SS.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 27 day of July, 1975 deponent served the within *Appending* upon *N. S. Attorney*

attorney(s) for *Appellee*

in this action, at *225 Cadman Plaza East*  
*Brooklyn, NY*

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
.....  
ROBERT BAILEY

Sworn to before me, this  
*29* day of *July*, 1975.  
*William Bailey*  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976